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THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY

ORDINANCE NO. 2008 – 19

AN AMENDMENT TO THE SANTA FE COUNTY LAND DEVELOPMENT CODE FOR THE UNINCORPORATED AREA OF THE COUNTY ENACTING AN ORDINANCE ESTABLISHING AN OIL AND GAS OVERLAY ZONING DISTRICT GOVERNING OIL AND GAS EXPLORATION, DRILLING, PRODUCTION, TRANSPORTATION; ABANDONMENT AND REMEDIATION; PROVIDING FOR A THREE STEP DEVELOPMENT APPROVAL PROCESS FOR OIL AND GAS PROJECTS INVOLVING: (1) DISCRETIONARY APPROVAL OF APPLICATIONS FOR OIL AND GAS OVERLAY ZONING DISTRICT CLASSIFICATIONS; (2) DISCRETIONARY APPROVAL OF SPECIAL USE AND DEVELOPMENT PERMITS; AND (3) SUBSEQUENT MINISTERIAL APPROVAL OF GRADING AND BUILDING PERMITS AND A CERTIFICATE OF COMPLETION; PROVIDING FOR CONSISTENCY WITH FEDERAL AND STATE STATUTES AND REGULATIONS AND WITH THE COUNTY GENERAL PLAN INCLUDING BUT NOT LIMITED TO A SEPARATELY ADOPTED OIL AND GAS ELEMENT OF THE GENERAL PLAN; ESTABLISHING FOR THE GALISTEO BASIN: (1) A LAND ENVIRONMENTAL SUITABILITY ANALYSIS; ESTABLISHING REQUIREMENTS FOR REPORTS, STUDIES, PLANS AND ASSESSMENTS FOR REVIEW OF APPLICATIONS FOR DEVELOPMENT APPROVAL OF OIL AND GAS OVERLAY ZONE DISTRICT CLASSIFICATIONS AS FOLLOWS: (1) A GENERAL AND AREA PLAN CONSISTENCY REPORT; (2) AN ENVIRONMENTAL IMPACT REPORT; (3) A FISCAL IMPACT ASSESSMENT; (4) AN ADEQUATE PUBLIC FACILITIES AND PUBLIC SERVICES ASSESSMENT; (5) A WATER AVAILABILITY ASSESSMENT; (6) AN EMERGENCY SERVICE AND PREPAREDNESS PLAN; (7) A TRAFFIC IMPACT ASSESSMENT; AND (8) A GEOHYDROLOGICAL REPORT; DEVELOPMENT AGREEMENTS; TRANSFER OF DEVELOPMENT RIGHTS; CAPITAL IMPROVEMENT AND SERVICE PROGRAMS, PLANS AND BUDGETS FOR ROADS, STORMWATER DRAINAGE, FIRE, POLICE AND EMERGENCY RESPONSE SERVICES; FINANCING OF PUBLIC FACILITIES AND SERVICES; CREATION OF SPECIAL IMPROVEMENT DISTRICTS; PROVIDING FOR BONDING AND INSURANCE REQUIREMENTS; CREATING STANDARDS FOR EQUIPMENT, OPERATIONS, EMERGENCY SERVICE AND RESPONSE PLANS; SITE REMEDIATION; GRADING AND SOIL DISTURBANCE, SPILLS AND LEAKS; LIGHTING, BUFFERS, LANDSCAPING AND SCREENING, CLOSED LOOP SYSTEMS; OPERATING HOURS; TEMPORARY AND PERMANENT ABANDONMENT; A DISCRETIONARY BENEFICIAL USE AND VALUE DETERMINATION PROCESS; APPLICATION AND PERMIT FEES; AMENDING A PORTION OF SANTA FE COUNTY ORDINANCE 1996-1, ARTICLE III, SECTION 5.2 DEFINING "MINERAL"; AMENDING ARTICLE X OF THE LAND DEVELOPMENT CODE TO ADD NEW DEFINITIONS; PROVIDING A TABLE OF CONTENTS AND APPENDICES

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**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY:**

## ARTICLE 1 – GENERAL

### SECTION 1. SHORT TITLE.

The Santa Fe County Land Development Code (1996) (as amended) is amended by this Ordinance, which shall be officially cited as the "Santa Fe County Oil and Gas Amendment to the Santa Fe County Land Development Code."

### SECTION 2. AUTHORITY, APPLICABILITY.

This Ordinance is promulgated pursuant to the authority set forth in Art. X and XIII of the New Mexico Constitution (1912); NMSA 1978 Section 4-37-1 (1975), NMSA 1978 Sections 3-21-1 et seq., NMSA 1978 Sections 3-19-1 et seq.; NMSA 1978 Sections 3-18-1 et seq., and NMSA 1978 §§ 19-10-4.1, 4.2 and 4.3 (1985). This Ordinance constitutes an exercise of the County's independent and separate but related police, zoning, planning and public nuisance powers for the health, safety and general welfare of the County and applies to all areas within the exterior boundaries of the County that lie outside of the incorporated boundaries of a municipality without exception.

### SECTION 3. SCOPE.

This Ordinance is intended to address oil and gas exploration, drilling, production, transportation, abandonment and remediation ("drilling") within Santa Fe County.

### SECTION 4. STATE AND FEDERAL PREEMPTION.

This Ordinance is supplementary to, does not replace, enhances and is consistent with the following federal and state statutes, Executive Orders and regulations:

(a) the Oil and Gas Act, NMSA 1978, §§ 70-2-1 et seq.;

(b) the Water Quality Act, NMSA 1978, §§ 74-6-1 et seq.;

(c) the Rangeland Protection Act, NMSA 1978, §§ 76-7B-1 et seq;

(d) Governor's Executive Order 2008-004;

(e) Governor's Executive Order 2008-038;

(f) the Emergency Planning and Community Right To Know Act, 42 U.S.C.A. §§ 11001 et seq;

(g) the New Mexico Public Health Act, NMSA 1978 §§ 24-1-1 et seq.;

(h) New Mexico Senate Joint Memorial 71;

(i) the Wildlife Conservation Act, NMSA 1978, §§ 17-2-37 et seq;

(j) the Cultural Properties Act, NMSA 1978, §§ 18-6-1 et. seq;

(k) the Galisteo Archaeological Sites Protection Act, Public Law 108-24;

(l) National Historic Preservation Act, 16 U.S.C.A §§ 470 et seq;

(m) The Uniform Trade Secret Act NMSA 1978, §§ 57-3A-1 et seq;

(n) The Prehistoric and Historic Sites Act, NMSA 1978, §§18-8-1 et seq.;

(o) The Cultural Properties Protection Act, NMSA 1978, §§ 18-6A-1 et seq.; and

(p) The Archaeological Resources Protection Act, 16 U.S.C.A. § 470 aa et seq.

**SECTION 5. PURPOSE.**

This Ordinance is enacted to protect and promote the health, safety and general welfare of present and future residents of the County. This Ordinance implements the plans, studies and preparation of an Oil and Gas Ordinance and General Plan Oil and Gas Element required by the Interim Development Ordinance, Ordinance 2008-02, enacted on February 27, 2008. This Ordinance is a police power, public nuisance and land use regulation designed to establish separate land use, environmental, fiscal, adequate public facility, traffic, cultural, historical and archeological, emergency service and preparedness, health and safety, and toxic chemical pollution standards to protect from adverse public nuisance and/or land use effects and impacts resulting from oil and gas exploration, drilling, extraction or transportation in the County. Applications for Oil and Gas Overlay Zoning District Classifications may be found to constitute as applied public nuisances and/or land uses affecting and impacting the health and safety of nearby and countywide residents and resources and such projects are required to fully mitigate all adverse public nuisance and/or land use effects and impacts prior to obtaining a development order granting development approval. The Land and Environmental Suitability Analysis ("LESA") as set forth in this Ordinance legislatively determines areas of environmental suitability for oil and gas facilities and shall be applied, together with all plans, studies, reports and assessments, upon review of application for oil and gas facilities to specifically determine the extent of any as applied adverse public nuisance and/or land use effects and impacts for the Galisteo Basin.

No oil or gas facility is permitted as of right in the County. Prior to authorizing any oil or gas facility, the County shall require the owner of the mineral estate, or oil and gas lessee of the mineral estate, to apply for, and obtain: an Oil and Gas Overlay Zoning District Classification; Special Use and Development Permit, Grading and Building Permits; and a Certificate of



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Completion. In connection with the approval process for obtaining an Oil and Gas Overlay Zoning District Classification, the County shall require the following detailed studies, plans, reports and assessments:

(a) A General and Area Plan Consistency Report demonstrating consistency with the General Plan and the General Plan Oil and Gas Element's Goals, Objectives, Policies and Strategies and with any applicable Area Plan, including but not limited to the Galisteo Basin Area Plan and with state and federal statutes and regulations;

(b) An Environmental Impact Report analyzing oil and gas adverse effects and impacts to: wildlife and vegetation natural habitats and corridors; flood plains, floodways, stream corridors and wetlands; steep slopes and hillsides; air and water pollution; global warming, traffic safety and congestion; excessive energy consumption from vehicle miles traveled; priceless archeological, historical and cultural artifacts and resources reflecting Hispanic, Anglo and Indian civilizations; toxic chemical pollution and related diseases and conditions affecting the health and safety of current and future residents; open space and scenic vistas;

(c) A Fiscal Impact Assessment describing the adverse effect and impact upon County revenue and costs necessitated by additional public facility and service costs generated by oil and gas projects and the feasibility for financing such facility and service costs;

(d) An Adequate Public Facilities and Services Assessment indicating whether current county public facilities and services related to roads, stormwater detention, fire, police, and emergency response services are adequate to service proposed oil and gas projects;

(e) A Water Availability Assessment to determine the availability of and impacts to fresh water surface and subsurface resources;

(f) An Emergency Service and Preparedness Report, identifying the name, location and description of all potentially dangerous facilities and Material Safety Data Sheets describing all additives, chemicals and organics used on the site, including but not limited to pipelines, wells and isolation valves, and providing for a written fire prevention, health and safety response plan for any and all potential emergencies, including explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide methane or other toxic gas emissions or hazardous material spills or vehicle accidents;

(g) A Traffic Impact Assessment, providing information necessary to assess adverse transportation effects and impacts of traffic generated by proposed oil and gas projects, including isolated and cumulative adverse effects and impacts to the traffic shed and traffic capacity, the passage of public safety and emergency response vehicles and any contribution to hazardous traffic conditions by heavily laden vehicles going to and from the project site; and

(h) A Geohydrologic Report, describing the adverse impacts and effects of oil and gas development with respect to groundwater resources located within geological formations in sufficient proximity to an oil and gas project; identifying fractured, faulted and any other formations that would permit extraneous oil, gas, dirty or gray water, mud or other chemicals,



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toxic minerals and pollutants to degrade the ground or subsurface water resources, or allow ground or subsurface water resources to be reduced, polluted and unavailable for public or private water supplies.

Development of oil and gas resources shall only be permitted where there is full mitigation of any present or future potential adverse public nuisance and/or land use effects or impacts as shown in the reports, plan, studies and assessments required in Section 9. To achieve these purposes this Ordinance establishes three distinct processes for development approval of oil and gas projects: (1) an application for discretionary administrative and quasi-judicial approval of an Oil and Gas Overlay Zoning District Classification; (2) subsequent to development approval of the Oil and Gas Overlay Zoning District Classification and the subsequent issuance of a state permit to drill, an application for a quasi-judicial discretionary Special Use and Development Permit ("SUDP"); and (3) obtaining ministerial Grading and Building Permits and a Certificate of Completion.

This Ordinance is intended to be both a Land Development Code Regulation and a stand-alone public nuisance ordinance which shall apply to any area-wide or project-specific adverse public nuisance and/or land use effects or impacts created by an oil or natural gas facility.

It is recognized that under New Mexico state law, surface and mineral estates are separate and distinct interests in land. Owners of subsurface mineral estates and oil and gas leases have certain rights and privileges, to use that part of the surface estate reasonably required to extract and develop the subsurface mineral or oil and gas resources. Similarly, owners of the surface estate have protection under the common law and pursuant to the Surface Owner's Protection Act, NMSA 1978 §§ 70-12-1 through 70-12-12 (2007), including protection of existing surface uses and protection from, or compensation for, adverse land use effects and impacts associated with the development of the mineral estate, and/or oil and gas lease.

Taking into account these rights and privileges and in order to evaluate whether, and if so, the extent to which this Ordinance unconstitutionally creates a regulatory taking without just compensation subsurface mineral fee interests and oil and gas leases, each applicant for an oil or gas facility, if denied at the Overlay Zoning or Special Use and Development Permit stages, shall be required to exhaust all administrative remedies by applying for a beneficial use and value assessment which application shall describe:

(a) the extent of diminution of use and value with respect to the entirety of the applicant's, owner's, or lessee's real property interests in the same ownership within the County;

(b) the distinct investment backed expectations of the owner, lessee, or applicant and predecessors in interest, in the same ownership within the County;

(c) the written lease document applicable to oil and gas drilling under an oil and gas lease;

(d) the availability of transfers of oil and gas development rights or clustering and co-location of drill sites to the remainder of the owner's, applicant's, or lessee's entirety of property in the same ownership; and

(e) any variance or relief necessary to relieve any unconstitutional hardship or regulatory taking created.

**SECTION 6: FINDINGS**

The Board of County Commissioners ("Board") hereby finds, declares and determines that this Ordinance:

(a) promotes the health, safety, and welfare of the County, its residents, and its environment by regulating adverse public nuisance and/or land use impacts and effects resulting from the exploration, drilling, operation and transportation of oil and gas;

(b) promotes the purposes of planning and land use regulation by assuring that adequate public facilities and services as defined by this Ordinance including roads, fire, police, stormwater detention and emergency and response services will be available at the time of approval of oil and gas projects;

(c) prevents the occurrence of adverse public nuisance and/or land use effects and impacts resulting from the abandonment of oil and gas activities within the County;

(d) protects the Galisteo Basin's priceless, unique, and fragile ecosystem, the preservation of which is of significant value to the citizens of the County and State;

(e) protects the Galisteo Basin's unique and irreplaceable historic, cultural, archaeological, and eco-tourist sites and scenic vistas, in addition to water and other natural resources;

(f) implements the July 2008 recommendations of the Governor's Executive Task Force Report to ensure the health, safety, and welfare of all New Mexicans and protect the natural and ecological riches of Santa Fe County and the Galisteo Basin from adverse public nuisance and/or land use effects and impacts of oil and gas drilling in the Galisteo Basin as follows:

(1) the Galisteo Basin has been recognized by the United States Congress as a nationally significant archaeological resource and contains within it a number of areas protected under the auspices of the Galisteo Archaeological Sites Protection Act, Public Law 108-208 (2004);

(2) oil and gas drilling in the Galisteo Basin will have significant impact on archaeological, historical, cultural and environmental resources and sensitive areas;



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(3) water resources in the Galisteo Basin are at risk as oil and gas drilling in the Galisteo Basin may negatively diminish or pollute local water supplies and sources of groundwater;

(4) due to the importance of the hydrology of the Galisteo Basin, not only to the citizens of Santa Fe County but to the interstate stream system through its contributions to the Rio Grande, it is extremely important to protect the quantity and quality of the surface and ground water resources in the Galisteo Basin;

(5) the Galisteo Basin is home to a variety of native plant and animal species whose arid habitats will be impacted negatively by oil and gas drilling. In addition terrestrial wildlife, aquatic and riparian species and habitats such as those found around the springs, wetlands, and drainages in the Galisteo Basin must be protected;

(6) clean air and water are essential to most resources and activities in the Galisteo Basin and will be degraded by oil and gas activity;

(7) sensitive environmental systems and cultural, archaeological and historic sites in the Galisteo Basin require permanent protection from oil and gas projects;

(8) New Mexico has an interest in strengthening protection to historic, archaeological and cultural resources by issuing new rules and new statutes, if necessary, to put into place greater, and in some cases absolute protection, for highly sensitive and significant historical, cultural and archaeological sites and landscapes;

(9) under the Wildlife Conservation Act (NMSA 17-2-37 through 17-2-46), species of wildlife indigenous to the state that may be found to be threatened or endangered by oil and gas drilling require such police power regulation over oil and gas development so as maintain and, to the extent possible, enhance wildlife numbers within the carrying capacity of the habitat;

(10) the New Mexico Department of Game and Fish recommends enacting setbacks for oil and gas wells of 0.5 miles from important aquatic and riparian habitats such as springs, wetlands, and drainages including, but not limited to, the Galisteo River;

(11) because oil and gas drilling may presently or in the future potentially cause irreparable harm to the County's water supply and pollution of water and air, may cause cancer, lung disease, and respiratory diseases, the oil and gas industry must show documentation of community health effects, and these effects must be scrutinized, and totally mitigated before drilling and extraction occur;

(12) pursuant to the New Mexico Public Health Act, NMSA 24-1-1 (1978), the Department of Health has the authority to "investigate, control, and abate the causes of disease... sources of mortality and other conditions of public health." Environmental hazards resulting from oil and gas projects may potentially cause adverse health effects;

(13) air, soil, and water contamination may occur during different stages of oil and gas drilling and extraction operations, and such contamination could affect human health;

(14) surface spills of fluids arising from the drilling and production of oil and gas are not uncommon, and such fluids may be inadvertently injected into or come in contact with fresh water aquifers;

(15) approximately 80% of the chemicals used in oil and gas development may possess inherent adverse health effects;

(16) Senate Joint Memorial 71 encourages implementation of the precautionary principle in public and environmental health assessment in New Mexico. The principle holds that when an activity raises threats of harm to human health or the environment, even if some cause and effect relationships are not fully and scientifically established, mitigation or abatement measures should nonetheless be employed;

(17) all New Mexicans have an equal right to live in a safe and healthy environment, and implementation of the precautionary principle promotes this premise as well as reduces potential effects on public health resulting from exposure to environmental toxins;

(18) persons and/or organizations, in response to proposed technological innovations, have a duty to take anticipatory action to prevent harm, an obligation to examine alternatives, and the right to stop the implementation of technological innovations in an open democratic process;

(19) the burden of proof of harmlessness for any proposed technological innovation must lie with the proponent of the innovation, not the general public;

(20) oil and gas exploration or drilling would have a negative effect on tourism. Scenic beauty is the greatest attraction in the Galisteo Basin. Oil and gas exploration could have a significant negative affect on the landscapes and communities in this area; and

(21) recognizes that the County of Santa Fe has supplemental authority, in addition to the authority of the State to regulate adverse public nuisance, land

use and environmental impacts and effects not inconsistent with State legislation and regulation, stemming from oil and gas projects in the Galisteo Basin and unincorporated areas of the County and makes no finding that the State has preempted or occupied the field of oil and gas regulation.

(g) implements the State's Department of Energy, Minerals and Natural Resources Department, Oil Conservation Commission's Application to amend 19.15.39 NMAC to add two new sections, 19.15.39.9 and .10, applicable to Santa Fe County and the Galisteo Basin, dated November 10, 2008.

## SECTION 7. DEFINITIONS AND RULES OF INTERPRETATION

A-1. Rules of Interpretation

Words, phrases, and terms defined in this amendment to the Land Development Code ("LDC") shall be given the meanings set forth below. Words, phrases, and terms not defined in the LDC shall be given their usual and customary meanings except where the context clearly indicates a different meaning.

The text shall control captions, titles, and maps.

The word "shall" is mandatory and not permissive; the word "may" is permissive and not mandatory.

Words used in the singular include the plural; words used in the plural include the singular.

Words used in the present tense include the future tense; words used in the future tense include the present tense.

Within this Ordinance, sections prefaced "purpose" and "findings" are included. Each purpose statement is intended as an official statement of legislative purpose or findings. The "purpose" and "findings" statements are legislatively adopted, together with the formal text of the Ordinance. They are intended as a legal guide to the administration and interpretation of the Ordinance and shall be treated in the same manner as other aspects of legislative history.

In their interpretation and application, the provisions of this Ordinance are considered minimal in nature. Whenever the provisions, standards, or requirements of any other applicable chapter of the LDC are greater, or any other County Ordinance more restrictive, the latter shall control.

In computing any period of time prescribed or allowed by this appendix, the day of the notice or final application, after which the designated period of time begins to run, is not to be included. Further, the last day is to be included unless it is not a working day, in which event the period runs until the next working day.

Words with specific defined meanings are as follows:

*Abandonment or Abandoned*: The permanent abandonment of a well or an Oil or Gas Facility, as established by filings of the operator with the state OCD, from production records maintained by the OCD, and from information gathered by the Administrator. The County may presume abandonment of an Oil or Gas Facility based upon: (i) nonuse or the lack of any production for one (1) year plus ninety (90) days, as established from records of the OCD; (ii) plugging and abandonment of a well pursuant to OCD Rule 19.15.4.202 NMAC; or (iii) any other evidence that the well has been abandoned or plugged and abandoned as established by filings of the Operator with the OCD or other records maintained by the OCD, or independent observations of the Administrator.

*Abut or abutting:* Having property lines in common.

*Adequate public facility:* An off-site public facility or system of facilities including, but not limited to: roads, fire, police, stormwater, and related substance retention; and emergency service and preparedness that has sufficient available capacity to service the oil or gas facility at adopted specified levels of service.

*Adjacent:* Two properties, lots, or parcels are "adjacent" where they abut, even if separated by a roadway or street, right-of-way, or railroad line, or any stream, river, canal, lake, or other body of water.

*Administrator*: *The Administrator* is the Director of the Land Use Division of the Growth Management Department, Santa Fe County, or any person subsequently assigned or delegated to perform some portion of the functions exercised by that person.

*Adopted level of service (LOS):* The LOS standards adopted for Adequate Public Facilities and Services. All applications are evaluated for the purposes set forth in this ordinance in accordance with these adopted LOSs.

*Adverse effect or impact:* A negative change in the quality of the environment, floodplains, floodways, streams, wetlands, hillsides and steep slopes, wildlife or vegetation habitats, air and water quality, global warming, public facilities and services, transportation capacity, health and safety, historical, architectural, archaeological, or cultural significance of a resource.

*Agricultural*: Property currently used for farming or ranching purposes, including pasture.

*Appeal:* An appeal to the Board where it is alleged that there is an error in any development order, requirement, decision, or determination made by the Administrator, Hearing Officer or CDRC.

*Applicant:* The owner of a mineral estate or oil and gas lease, or a production right owner or lessee of lands, leases, or mineral estates proposed to be developed or duly designated



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representative who shall have express written authority to act on behalf of the owner. Consent shall be required from the legal owner of the premises and any person, corporation, partnership, trust, business entity in the same ownership. Applicant shall also be a unit operator who is appointed under a unit agreement or pooling arrangement, including working interest, royalty interest, and overriding interest owners or lessess.

*Application:* Any application for a development order or a development approval of an Oil or Gas Facility.

*Area plan:* A Plan encompassing a specific geographic area of the County, which is prepared for the purpose of specifically implementing the County General plan by refining the policies of the General plan to a specific geographic area or containing specific recommendation as to the detailed policies and regulations applicable to a focused development scheme. An area plan shall consist of goals, objectives, policies, and implementing strategies for capital improvements, zoning; subdivision regulations, official maps, the level of service required for public facilities and services; physical and environmental conditions; cultural, historic and archeological resources, and land-use characteristics of the area; and maps, diagrams, and other appropriate materials showing existing and future conditions. Area plan shall include, but not be limited to, the Galisteo Basin Area Plan.

*Base zoning district:* Any of the zoning districts established pursuant to Articles III and VI of the LDC, which underlay an Oil and Gas Overlay Zoning District Classification.

*Board:* The Board of County Commissioners of Santa Fe County, State of New Mexico.

*Body of water*: All water situated wholly or partly within or bordering upon the County whether surface or subsurface, public or private.

*Bond:* Any form of a surety bond in an amount and form satisfactory to the County attorney. All bonds shall be approved by the County attorney whenever a bond is required by these regulations.

*Buffer yard:* The required area and setback, with appropriate installation of landscaping and screening materials, for Oil or Gas Facilities.

*Buildable Area:* That portion of an Oil or Gas Facility upon which buildings, structures, wells or equipment may be placed, limited by floodplain, slope or other terrain constraints required buffer zones and setbacks, the maximum number of wells and co-location of wells or other design and development standards set forth in the Ordinance.

*Building:* A structure designed, built, or occupied for an Oil or Gas Facility, storage or equipment.



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*Building permit:* See *development approval;* A ministerial permit required by the LDC after a Special Use and Development Permit for an Oil or Gas Facility has been approved has been approved.

*Capacity:* The maximum demand that can be accommodated by a public facility or service without exceeding the adopted level of service (LOS). For roads and highways, "capacity" shall be measured by the maximum number of vehicles that can be accommodated by an intersection or road link, during a specified time period, under prevailing traffic and control conditions at that road's adopted LOS.

*Capital improvement:* A public facility with a life expectancy of three or more years, to be owned and operated by or on behalf of the County, which shall also include equipment for roads, highways, fire, police, stormwater or liquid material detention, or emergency service response.

*Capital improvements and services budget:* The list of recommended public capital improvements and public services to be constructed and/or provided during the forthcoming five-year period ("CIP").

*Capital improvements and services program and plan:* A plan setting forth, by category of public facilities and public services, those capital improvements and public services and that portion of their costs that are attributable to serving new development or resolving existing infrastructure and/or provided deficiencies within designated service areas for such public facilities and public services over a period from five (5) to twenty (20) years.("CIP").

*Carrying capacity:* A measure to determine environmental infrastructure, water availability, traffic capacity, police, fire and emergency service and response capacity, or fiscal criteria upon which to ground development approval of Oil and Gas projects, without degrading the adopted level of service.

*CDRC*: The County Development Review Committee of Santa Fe County or successor Planning Commission of Santa Fe County.

*Certificate of completion:* The additional permit(s) required by subsection 11.16.1 of this Ordinance.

*Certify:* Whenever this Ordinance requires that an agency or official certify the existence of some fact or circumstance such certification be made in any manner, oral or written, which provides reasonable assurance of the accuracy of the certification.

*Closed Loop System*: A system for oil and gas drilling that utilizes a series of completely enclosed above ground tanks instead of a Reserve Pit that are used for the management of drilling, workover, or other fluids.

*Cluster:* A group of cultural, historical, architectural, or archaeological resources with compatible buildings, objects, artifacts or structures geographically or thematically relating to and reinforcing one another through design, setting, materials, workmanship, congruency, and association.

*Code*: means Santa Fe County Land Development Code, Ordinance No. 1996-11 (as amended) and any successor ordinance amendments.

*Collector street/road: See road, collector.*

*Co-location*: The placement of two or more well bores on a single drilling site, or the placement of two or more drilling sites contiguous to each other.

*Commission*: The New Mexico Oil Conservation Commission.

*Common ownership: See Same Ownership.*

*Compatible* – A situation where an Oil or Gas Facility or Facilities can co-exist or act together harmoniously, considering adverse effects or impacts on environmentally sensitive habitats, wetlands, flood areas, steep slopes, historic, cultural and archaeological artifacts and sites, noise levels, odors, glare, potential fire hazards, explosions, visual impacts, effects to surface water and groundwater quality/quantity, adequacy of the road and highway system, stormwater detention, fire, police and emergency response services, air quality and surrounding land uses.

*Compatible Oil and Gas Use-* A use which has received development approval for the Oil and Gas Overlay Zoning District Classification and Special Use and Development Permit, Grading and Building permits and Certificate of Completion.

*Compressor:* A device designed to increase the pressure of gas for transmission through a gathering system or transmission line.

*Concept Plan*: The preliminary development plan required to be submitted with an application for an Oil and Gas Overlay Zone District Classification.

*Conservation easement:* A non-possessory interest of a holder in real property that imposes limitations or affirmative obligations designed to: retain or protect natural, scenic, or open space values of real property or assure its availability for agricultural, forest, recreational, or open space use; protect natural resources; maintain or enhance air or water quality; or preserve the historical, architectural, archeological, or cultural aspects of real property.

*Contiguous:* Lots are contiguous when at least one boundary line of one lot touches a boundary line or lines of another lot.

*County:* Santa Fe County, New Mexico.

*County Assessor:* The County Assessor of Santa Fe County, State of New Mexico.

*County Attorney*: The County Attorney or his Deputy designated by the Board to furnish legal assistance for the administration, interpretation, enforcement and implementation of this Ordinance.

*County Clerk:* The County Clerk of Santa Fe County, State of New Mexico.

*County Manager*: The County Manager of Santa Fe County, State of New Mexico.

*Dedication:* The transfer of fee simple title to, or grant of an easement over lands and improvements to the County subject to the conditions of a development order requiring such transfer and acceptance.

*Degradation:* Pollution of water that unreasonably reduces the quality of such water. The quality of a representative sample of water is unreasonably reduced when such water is rendered harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

*Demolition:* Any act or process that destroys or razes in whole or in part, or permanently impairs the structural integrity, or allows deterioration by neglect of a building or structure or land, wherever located, or a building, object, site, or structure, including interior spaces, of cultural, archeological or historic artifacts, or external sites.

*Derrick*: Any portable framework, tower, mast, and/or structure which is required or used in connection with drilling or re-working a well for the production of oil or gas.

*Development:* Any man-made change in improved and unimproved sub-surface mineral and surface estates, including, but not limited to: buildings or other structures; oil and gas drilling, dredging, filling, extraction or transportation or oil and gas, grading, paving, diking, berming, excavation, exploration, or storage of equipment or materials, whether in pits, structures, ponds, containers, land fills, any other detention facility, or significant land disturbance.

*Development Agreement:* An agreement between the County and an applicant for an Oil and Gas Overlay Zone District Classification, Special Use and Development Permit regarding the development and use of the property through which the County agrees to vest development use density or intensity, or refrain from adopting new regulations affecting subsequent phases of development, in exchange for the provision of public facilities or services by the applicant and satisfaction of conditions incorporated into a development order granting a Special Use and Development Permit or Oil and Gas Overlay Zoning District Classification.

*Development Approval:* Any authorized action by the Board, CDRC, Administrator, or other officer or agency of the County that approves, approves with conditions, or denies applications



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for development of a parcel, tract, building, or structure, including any of the following: oil and gas overlay zoning district classification; concept and detailed development plans; beneficial use or value determination; transfers of development rights; special use and development permits, grading or building permits; certificate of completion or appeals.

*Development Order:* The official ordinance, regulation, resolution, or decision of the Board, CDRC, Administrative Officer or an officer or agency of the County with respect to the granting, granting with conditions, or denial of an application for an oil and gas project including: an Oil and Gas Overlay Zoning District Classification; a Special Use and Development Permit; building and grading permits and a certificate of completion.

*Development Plan:* A detailed plan for an oil and gas project accompanying development approval of a Special Use and Development Permit including such drawings, documents, and other information necessary to illustrate completely the proposed development. Shall specifically include such information as required by this Ordinance.

*Development Project*: Any Oil or Gas Facility subject to the approval of an Oil and Gas Overlay Zoning District Classification, Special Use and Development Permits, Grading and Building Permits, and a Certificate of Completion.

*Development Rights:* The rights of a subsurface or surface mineral, gas or oil estate owner and/or lessee to develop such property, dependent on the type of leasehold or ownership interest, and subject to the constraints of applicable law. Under certain circumstances, development rights may be transferred to other owners or lessees of mineral, oil or gas fee or leasehold interests thus permitting the recipient to develop more intensely than otherwise permitted; see Transfer of Development Rights (defined below) and Section 9.7.

*Development Site:* The designated and approved oil or gas surface drill site within a Buildable Area upon which an approved Oil or Gas Facility may be constructed. The development site of a lot, tract or parcel includes buildings and/or structures, accessory uses, retention facilities and landscape, buffer and screening areas.

*Development standards:* Standards and technical specifications for improvements to land required for an Oil or Gas Facility approval, including specifications for the placement, dimension, composition, and capacity of: derricks, drilling equipment, oil and gas wells, streets and roadways; signage for traffic control and other governmental purposes, including road signs, and other traffic control devices on roadways; highways, lighting of roads; water mains and connections, including facilities and connections for the suppression of fires; off-street parking and access; landscaping, screening and contouring of land, drainage, sedimentation, and erosion control; open space and storm drainage culvert facilities, including drains, conduits, and ditches; environmental, air and water quality, global warming, historic, cultural and archeological site and artifact preservation.

*Directional drilling:* Any method of drilling for oil or gas that can reach a subsurface reservoir containing oil or gas resources at a significant horizontal distance from the surface location of the bore or wellhead on a single or co-located drill site. For purposes of this Ordinance,

directional drilling includes without limitation related current technologies variously called slant drilling, horizontal drilling, extended-reach drilling, multi-lateral drilling (branched directional techniques), coiled tube drilling, and any future oil or gas technology that can span horizontal distance between surface and subsurface locations.

*Drilling*: Digging or boring a new oil or gas well or reentering an existing well for the purpose of exploring for, developing or producing oil, gas, or other hydrocarbons, or for the purpose of injecting gas, water, or any other fluid or substance into the earth.

*Drill Site*: The premises used during the drilling or re-working of an oil and gas well or wells and subsequent life of a well or wells or any associated operation. The area of land in which oil and gas derricks, equipment, buildings, structures, improvements, wells, excavations, dumps, waste piles, ponds and other features normally utilized in oil and gas operations are located.

*Drilling Equipment*: The derrick, together with all parts of and appurtenances to such structure, every piece of apparatus, machinery, or equipment used or erected or maintained for use in connection with drilling on an oil and gas development site.

*Easement:* Authorization by a property owner for another to use the owner's property for a specified purpose.

*Effect: See Adverse effect or impact.*

*Engineer: See professional engineer.*

*Environmental impact report:* A process to examine adverse on- and off-site environmental effects impacts by an oil and gas project.

*Erosion:* Soil movement due to wind or water.

*Escrow:* A deposit of cash with the County or escrow agent to secure the promise to perform some act.

*Exaction:* The requirement for development to dedicate a portion of land or a payment in lieu of land costs of public facilities or services as a condition of a development order.

*Existing structure:* A structure that is built and completed as of the effective date of this code.

*Expenditure:* A sum of money paid out in return for some benefit or to fulfill some obligation. Includes binding contractual commitments, whether by development agreement or otherwise, to make future expenditures as well as any other substantial change in position.



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*Expenses:* Those expenses that shall include consultant and engineering costs, exactions, application fees, costs of obtaining a bond, trust agreement, or irrevocable letter of credit posted with the County to assure compliance with conditions of approval of an Oil and Gas Overlay Zoning District Classification, Special Use and Development Permit, and other Grading and Building Permit Applications, as well as necessary development costs.

*Exploration*: Geologic or geophysical activities related to the search for oil, gas, or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation, performed in the search and evaluation of oil and gas deposits

*Exploratory well*: A well drilled for the purpose of discovering oil, gas, or mineral reserves

*Fire Department*: The Santa Fe County Fire Department – County professionally employed fire fighters, excluding volunteer personnel.

*Fiscal impact assessment:* The process of assessment of oil and gas development applications as to the positive or negative effects or impacts they will have on the community's revenues and expenditures for public improvements, delivery of services and net cash flow.

*Flood or flooding:* A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters or the unusual and rapid accumulation of run-off of surface waters from any source.

*Floodplain:* Any land area susceptible to being inundated by water from any source. See *area of special flood hazard, flood or flooding,* and *100-year floodplain.*

*Floodplain, 100-year:* See *100-year floodplain.*

*Floodway:* A channel, river, stream, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood; the 100-year floodplain.

*Fracturing or fracing:* The use of water or other fluids as a stimulant injected into an oil or gas well to split or fracture subsurface geological formations to improve the productivity of the oil or gas well.

*Gas*: Any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions and/or the gaseous components or vapors occurring in or derived from



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petroleum or natural gas; whenever "gas" is used in this Ordinance it includes "natural gas" and/or "methane."

*Gas Well*: A well having a pressure and volume of natural gas; specifically, producing methane, often in combination with a variety of other substances such as butane, propane and carbon dioxide, or an Oil well with a (gas-oil ratio) in excess of 100,000 cubic feet of gas per barrel of oil.

*Gathering system*: A system of pipes, auxiliary tanks and other equipment used to move oil, gas or water from the well to a tank battery or to a transmission line for eventual delivery to a refinery.

*General plan:* The statutorily defined long-range plan intended to guide the growth and development of the County which includes inventory, analytical sections, Growth Management and Oil and Gas elements, land use, future economic development, housing, recreation, parks, open space, environment, libraries, utilities, public safety, fiscal integrity, transportation, infrastructure, public services, facilities, and community design, and environmental sustainability, all related to the goals and objectives, policies, and strategies contained within the Plan.

*Geohydrologic report:* A report, including baseline studies, on potential adverse effects and impacts of an oil and gas project on subsurface and ground water resources and identifying fractured geological formations that would permit degradation of the water resources.

*Glare:* The sensation produced by luminance within the visual field that is sufficiently greater than the luminance to which the eyes are adapted to cause annoyance, discomfort, or loss in visual performance and visibility.

*Groundwater*: All subsurface water as distinct from surface water, specifically, that part of the water in the saturated zone (a zone in which all voids, large and small, ideally are filled with water under equal or greater than atmospheric pressure).

*Height, building:* The vertical dimension measured from the average elevation of an oil and gas building or structure.

*Historical, Cultural or Archaeological Resource*: Historic Sites, Cultural Sites, Archeological Sites, Artifacts and Landmarks that are designated (or eligible for designation) by the State of New Mexico. A list, called the official register of Cultural Properties, and the list of the National Register for Historic Places, are on file with the Administrator.

*Impact area:* The area within which a proposed Oil or Natural Gas Facility creates a demand for public services and/or facilities and is evaluated for compliance with the provisions of this Ordinance; that area in which the capacity of public facilities and services will be aggregated and compared to the demand created by existing development, committed development, and the proposed oil and gas project.



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*Improvement District:* A special district formed by the Board for the purpose of levying assessments, rates, or charges on public facilities and services needs generated by Oil or Natural Gas Facilities.

*In the County, within the County*: Areas within the boundaries of the County, but not within the limits of any incorporated municipality.

*Infrastructure:* Any physical system or facility that provides essential services, roads and highways, such as stormwater detention, transportation, fire, police and emergency services, and the management and use of resources regarding same. Includes other physical systems or facilities that may not be specifically enumerated in this definition.

*Intensity:* The number of oil and gas wells permitted per square mile or section.

*Inventory:* A systematic listing of cultural, historical, architectural, or archaeological resources prepared by the County, Indian Tribe or Pueblo, state, or federal government or a recognized local historical authority, following standards set forth by federal, state, and County regulations for evaluation of cultural properties.

*Land development code ("LDC"):* All ordinances in the County Code including this Oil and Gas ordinance, zoning, subdivision, official mapping, capital improvements programming, planning and budgeting, building, housing, public nuisance, safety, and environmental codes that relate to land use.

*Landscaping:* The process or product of installing vegetation, fences, screening, or material for purposes of screening or softening the appearance of an oil and gas project site, including grading and installation.

*Lessee:* A person, corporation or other legal entity that has been granted an Oil and Gas Lease from the Owner of a mineral estate in land or who has received an assignment of all or a portion of a previously granted Oil and Gas Lease.

*Level of service:* An indicator of the extent or degree of service provided by, or proposed to be provided by, a facility or public service based upon and related to the operational characteristics of the facility or service. Indicates the capacity per unit of demand for each public facility or service, including the cumulative impacts or capacity of a series of oil and gas and other development projects taken together to measure the joint and several impacts.

*Lot:* A tract, parcel, or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership, or possession, or for development.

*Methane*: *See Gas.*



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*Mineral*: An inanimate constituent of the earth, in solid, liquid, or gaseous state which, when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form of metal or metallic compound, a non-metal, a non-metallic compound, a chemical, an energy source, or a raw material for manufacturing road building or construction material or oil, oil shale, natural gas, geothermal resources, but shall not include surface or subsurface water.

*Mitigation:* A system by which an oil and gas facility causing adverse effects or impacts is required to counterbalance that impact by creating an equivalent benefit through dedication, payments, offsets, alternative construction of self-imposed restrictions, reduction in the number and location of wells, collocation of wells or purchase of development rights under the transfer of development rights program.

*National Historic Preservation Act:* 16 U.S.C. Part 470.

*Natural Gas*: *See Gas.*

*Natural state:* The topography that exists at the time information is gathered for Flood Insurance Rate Maps or any subsequent approved revisions to those maps.

*OCD*: The Oil Conservation Division of the Energy, Minerals and Natural Resources Department of the State of New Mexico.

*Official map:* A map established by law showing the right-of-way lines for existing or proposed roads, highways, police, fire, and emergency service facilities, off-site retention facilities, and stream buffers laid out, adopted, and established pursuant to this Ordinance. The official map shall be amended from time to time to show any amendments or additions resulting from the recording and filing of approved subdivision plats or oil and gas projects.

*Offset:* The amount of the reduction of an exaction designed to fairly reflect the value of area-related facilities or other oversized facilities provided by an applicant pursuant to rules or administrative guidelines in the LDC.

*Off site:* Any premises not located within the area of the property subject to development approval, whether or not in the same or common ownership of the applicant.

*Oil and Gas Lease*: A conveyance of a fee simple determinable estate in the minerals whereby the lessee is granted the power to explore for, produce and market the oil and gas pursuant to its terms.

*Oil Conservation Division: See OCD*

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*Oil or Gas Facility or Facilities:* includes, but is not limited to, the following:

(i) A new Well and the surrounding Well site, built and operated to produce crude oil and/or gas, including auxiliary equipment required for production (e.g., separators, dehydrators, pumping units, Tank Batteries, Tanks, metering stations, and other equipment located within the perimeter of the well site);

(ii) Any equipment involved in the re-working of an existing well bore, including, but not limited to, a workover rig;

(iii) A compressor station, including associated facilities that serve one or more Wells employing engines and/or motors;

(iv) A water or fluid injection stations including associated facilities;

(v) A storage or construction staging yard associated with an Oil or Gas Facility;

(vi) A facility related to the production of crude oil and/or gas which contains engines and/or motors;

(vii) A Gathering System consisting of crude oil or gas gathering lines or water lines;

(viii) Any facility associated with a Gathering System or water collection line, such as a drip station, vent station, pigging facility, chemical injection station, transfer pump station and valve box;

(ix) A gas treating facility that serves multiple Wells or Gathering Systems;

(x) Any other structure, building or facility used in the exploration, drilling or production phase of oil or gas development, and;

(x) A pipeline for transportation of oil, gas or water with the sole exception of facilities used for the transportation of natural gas under a tariff regulated by the New Mexico Public Regulation Commission ("NMPRC") or the Federal Energy Regulatory Commission ("FERC").

*100-year floodplain:* The land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year, and the area designated as a Federal Emergency Management Agency Zone A, AE, AH, or AO on the Flood Insurance Rate Maps. See *area of special flood hazard, flood or flooding,* and *floodplain.*

*On site:* Development, construction, installation of infrastructure, or any other activity that occurs on the site that is the subject of an application for an oil and gas project.

*Operator or Owner*: The owner of a sub-surface mineral estate or an oil and gas lessee, or other person, corporation or legal entity who, duly authorized, is in charge of the development of a lease or the operation of a producing property, or who is in charge of a facility's operation or management of an Oil or Gas Facility.

*Order:* See *development approval, or development order.*

*Ordinance:* Any legislative action, however denominated, of the County that has the force of law, including any amendment or repeal of any ordinance, the General Plan, the Official Map or any Area Plan.

*Organization:* An organization operating on a membership basis with pre-established formal membership requirements and with the intent to promote the interests of its members.

*Overlay zoning district classification:* An Oil and Gas Overlay Zoning District Classification that is superimposed over one or more base zoning districts or parts of districts and that imposes specified requirements in addition to those applicable in the underlying base zoning district, for oil and gas projects.

*Owner:* The record owners of the fee, a contract purchaser holding equitable title, an oil and gas lessee, or a vendee in possession, including any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to or sufficient proprietary interest in an Oil or Gas Facility.

*Parcel:* An area of land not dedicated for public or common use capable of being described with such definiteness that its location and boundaries may be established and includes but is not limited to lots.

*Performance standards:* Regulation of oil and gas development based on environmental, historic, cultural or archaeological, health, safety, adequate public facility or service, fiscal impact, emergency preparedness, General and Area Plan Consistency, water availability, traffic impact and other criteria in this Ordinance.

*Permit:* See development approval or development order; Special Use and Development Permit, Building Permit, Grading Permit or Certificate of Completion for an approved Oil and Gas Project.

*Person:* Any natural person, corporation, partnership, trust, entity, organization, joint venture, association (including homeowners' or neighborhood associations), trust, or any other entity recognized by law.

*Pit*: A surface or subsurface impoundment, man-made or natural depression, or diked area on the surface that is earthen excavation used for the purpose of retaining or storing substances associated with the drilling or operation of oil and gas wells.

*Planned capital improvement:* A capital improvement that does not presently exist but which is included within the capital improvements program, plan or budget, and is funded, constructed, or otherwise made available within the time period prescribed.

*Planning Commission:* See CDRC.

*Police power:* Inherent, delegated, or authorized legislative power for purposes of regulation to secure health, safety, and general welfare and to prevent public nuisances.

*Pollution:* The contamination or other degradation of the physical, chemical or biological properties of land, water or air, including a change in temperature, taste, color, turbidity or odor, or such discharge of any liquid, gaseous, solid, radioactive or other substance onto the land or into the water or air that will, or is likely to, create a nuisance or render such land, water or air harmful, detrimental or injurious to the public health, safety or welfare, or harmful, detrimental or injurious to domestic, commercial, industrial, agricultural, recreational or other beneficial uses, or to livestock, wildlife, birds, fish or other aquatic life.

*Pooling:* A term frequently used interchangeably with unitization but more properly used to denominate the bringing together of small tracts sufficient for the granting of a well permit under applicable spacing rules, as distinguished from unitization, which term is used to describe the joint operation of all or some portion of a producing reservoir. Pooling is important in the prevention of drilling of unnecessary and uneconomic wells, which result in physical and economic waste. The term pooling is also used occasionally to describe cross-conveyances of mineral or royalty interests by separate owners or conveyances of such interests to a trustee for the purpose of sharing the income from production of wells drilled anywhere on the consolidated tract. The former usage of the term related to the working interest alone or to the working and non-operating interests; the latter usage typically relates to the non-operating interests only.

*Producing*: The development stage in which marketable quantities of oil or gas, or both, are extracted from a well and may also signify the extraction level at which the quantitative terms of the lease are fulfilled.

*Production rights*: The exclusive right to explore for, produce and develop oil, gas or mineral resources within a given area or zone.

*Professional engineer:* An engineer licensed by the State of New Mexico.

*Projected traffic:* The traffic that is projected to develop in the future on an existing or proposed road.

*Proposed project:* The uses, structures, and buildings contained in an application for an oil and gas project approval.

*Provider:* A person, business, corporation, partnership, trust, association, joint venture or other entity licensed by the OCD.

*Public hearing:* A proceeding preceded by published notice and actual notice to certain persons and at which certain persons, including the applicant, may present oral comments or documentation. In a quasi-judicial or administrative hearing, witnesses are sworn and are subject to cross-examination.



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*Receiving parcel*: A parcel of land that is the recipient of a transfer of oil and gas development rights, directly or by intermediate transfer from a sending parcel or a TDR Bank, upon which receipt the receiving parcel may increase the number of oil and gas drill sites pursuant to Sections 9.4.1.1 and 9.7.

*Reclamation:* The employment during and after an oil and gas operation of procedures reasonably designed to minimize, as much as practicable, the disruption from the oil and gas facility and to provide for the rehabilitation of affected land through the use of plant cover, soil, stability, water resources, or other measures appropriate to the subsequent beneficial use of such reclaimed lands. Any land or Oil or Gas Facility not required for production shall be reclaimed immediately after drilling ceases.

*Reservation:* The designation of a portion of a property for a proposed right-of-way without dedication of the right-of- way.

*Reserve pit:* A pit that is created at the drilling site of an oil or gas well for drilling fluid and mud and other materials used in or produced during drilling.

*Resource:* A source or collection of buildings, objects, sites, structures, or areas that exemplify the historical, cultural or archaeological history of Santa Fe County.

*Retention Facility:* A facility used for storage of peak discharge rates of stormwater runoff, or which provides storage for pollutants, chemicals, minerals, oil, gas, rocks, mud, sediments, gray water or materials.

*Road, private:* Any road not dedicated to the public and to be maintained by a private entity. All private roads must meet the same standards as provided for public roads in the Santa Fe County Oil and Gas and Growth Management Elements. Private roads will only be permitted if the Applicant enters into a development agreement for which construction, operation, maintenance standards and financial terms will be provided in the development agreement.

*Sale or lease:* Any immediate or future transfer of ownership, or any possessory interest in land, including contract of sale, lease, devise, intestate succession, or other transfer of an interest in the surface or subsurface, whether by metes and bounds or lot and block description.

*Same ownership:* Ownership in whole or in part on the same or separate mineral estates, leases, parcels, tracts, or lots, whether contiguous or not, by any person, corporation, partnership, trust, business, entity, association, fund, joint venture or any individual owning any stock or a legal or equitable interest in such common ownership, person, corporation, partnership, trust, business, entity, association, fund, joint venture or individually, as of the date of enactment of the Interim Development Ordinance on February 24, 2008. Same ownership shall include common operation or control under an oil and gas unit consisting of multiple leases with varied ownership.



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*Screen or screening:* Vegetation, fence, wall, berm, or a combination of any or all of these that partially or completely blocks the view of, and provides spatial separation of a portion or all of a site from, an adjacent property or right-of-way.

*Security:* The letter of credit or cash escrow provided by the applicant to secure conditions imposed in a development order.

*Sediment:* Soil or other surface material transported by wind or surface water as a product of erosion.

*Sending Parcel*: A parcel of land that is a transferor of oil and gas development rights and upon such transfer the right to develop oil and gas facilities is extinguished.

*Site:* The location of an Oil or Gas Facility or an historic building, structure, or cluster, whether standing, ruined, or vanished, and where the location itself maintains historical, architectural, archaeological, or cultural value regardless of the value of any existing structure.

*Site-generated traffic:* Vehicular trips attracted to, or produced by an oil and gas project on the site.

*Slope:* The ratio of elevation change to horizontal distance, expressed as a percentage. Computed by dividing the vertical distance by the horizontal distance and multiplying the ratio by 100. For purposes of this appendix, a "slope" shall include only those areas with a horizontal distance of at least 50 feet.

*Soils:* Dirt, sand, and other similar earth matter; rocks and other solid or semisolid mass material, whether produced by man or by nature.

*Solid waste:* Any garbage; refuse; sludge from an oil or gas site; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from oil and gas activities.

*Special Use and Development Permit ("SUDP")*: A development approval process required for an Oil or Gas Facility subsequent to the granting of a development order approving an Oil and Gas Overlay Zoning District Classification for the project and the issuance of a state permit to drill.

*Spacing:* The subsurface volume, as administratively calculated by OCD. This Ordinance does not determine subsurface spacing or drainage-radius. This Ordinance uses OCD-determined subsurface spacings calculations for purposes of these regulations.

*State:* The State of New Mexico and includes all state departments, agencies under the executive branch.

*State Engineer*: The duly authorized State Engineer of New Mexico whose office has jurisdiction over certain surface and subsurface water rights.

*Steep slope:* A slope equal to or exceeding 11%.

*Structure:* Anything constructed or a combination of materials that form a construction for use, occupancy, or ornamentation, whether installed on, above, or below the surface of land or water.

*Subject property:* The property subject to an application for a SUDP.

*Subsurface estate:* See mineral estate or subsurface oil and gas lease.

*Tank:* A cylinder made of steel or other impervious material that is designed to store oil or other liquid hydrocarbons, water, produced water or other liquids used in the drilling or production of an oil or gas well.

*Tank Battery*: A group of Tanks located at a convenient point for storing oil prior to transportation by truck or pipeline to a refinery.

*Transfer of development rights:* The conveyance of oil or gas development rights to a receiving parcel by deed, easement, or other legal instrument by a subsurface mineral estate owner or oil and gas lessee.

*Unit:*

(1) The total area incorporated in a unitization agreement. An area of land, deposit, or deposits of minerals, stratum, or pool or pools, or a part or parts thereof, as to which parties with interests therein are bound to share minerals produced on a specified basis and as to which those having the right to conduct drilling or mining operations therein are bound to share investment and operating costs on a specified basis. A unit may be formed by convention or by order of an agency of the state or federal government empowered to do so. A unit formed by order of a governmental agency is termed a "compulsory unit;" or

(2) The acreage allocated to a particular well.

*Unit agreement:* An agreement or plan of development and operation for the recovery of oil and gas made subject thereto as a single consolidated unit without regard to separate ownerships and for the allocation of costs and benefits on a basis as defined in the agreement or plan.

*Unit operator:* The person, association, partnership, corporation, or other business entity designated under a unit agreement to conduct operations on unitized land as specified in such agreement.



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*Use:* The purpose for which a land or a structure is designed, arranged, or intended to be occupied or used, or for which it is occupied, maintained, rented, or leased.

*Variance:* A request for a beneficial use and value determination to the Board for permission to vary or depart from any development order denying an oil and gas project where a literal enforcement of the development order will result in an unnecessary and unconstitutional hardship resulting in a loss of all or substantially all use or value of the property interest in the same or common ownership.

*Vista:* A view through or along a street, which, as a view corridor, frames, highlights, or accentuates a prominent building, object, site, structure, scene, or panorama, or patterns or rhythms of buildings, objects, sites, or structures.

*Walls*: A solid upright barrier, usually constructed of, but not limited to, concrete block, adobe brick or stone, used to enclose or screen areas of land. Walls that are part of a building are not included in this definition.

*Well*: Any hole or holes, bore or bores, to any sand, formation, strata or depth for the purpose of exploring for, producing and recovering any oil, gas, liquid, hydrocarbon, or any of them.

*Well site:* See *Drill site.*

*Wetland:* Land that has a predominance of hydric soil; is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and under normal circumstances supports a prevalence of that vegetation.

*Workover*: An operation on a producing well to restore or increase production. A workover is typically performed for routine maintenance or repair of downhole equipment.

**SECTION 8. GENERAL REQUIREMENTS.**

This Chapter establishes a three-step process for approval of an oil and gas drilling project within Santa Fe County:

(a) No oil or gas facility is permissible anywhere within Santa Fe County until an Oil and Gas Overlay Zoning District Classification ("Overlay Zone") is extended to the land on which the facility will be constructed within the owner/applicant's property in the same ownership.

(b) After receiving approval for an Application for Permit to Drill "APD" on Form C-101 from the OCD or successor State entity, the applicant shall apply for a Special Use and Development Permit ("SUDP") establishing the further conditions and requirements for well sites and structures; and

(c) Application for Building or Grading Permits and a Certificate of Completion.



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## SECTION 9. OIL AND GAS OVERLAY ZONING DISTRICT CLASSIFICATION

## SECTION 9.1. PURPOSES OF THE OIL AND GAS OVERLAY ZONING DISTRICT CLASSIFICATION AND SUBSEQUENT DEVELOPMENT APPROVAL PROCESSES.

This section applies to specific oil and gas facilities within the County. The regulations and approval processes established by this section ensure that oil and gas activity is compatible with the on- and off-site environment and adjacent properties and neighborhoods.

The specific purpose and intent of these provisions are to:

(a) provide for the timely application for, and consideration of an oil and gas overlay zoning district classification for specific oil or gas mineral estates and/or oil and lease projects;

(b) authorize a subsequent special use and development permit process;

(c) provide for required grading and building permits and a certificate of completion;

(d) provide for the appointment of a hearing officer;

(e) authorize establishment of capital improvement and services budgets, plans and programs ("CIP") and public improvement or assessment districts for financing of infrastructure and services, the need for which is generated by oil and gas projects in the County;

(f) authorize an amendment to the General Plan creating an Oil and Gas Element;

(g) authorize development of a Galisteo Basin Area Plan;

(h) protect the health, safety, and welfare of the citizens of Santa Fe County;

(i) preserve the quality of life, economy, infrastructure, environment, historic, cultural, archaeological and eco-tourist resources, scenic vistas, natural resources, and natural landscapes of the County;

(j) protect the environment of the Galisteo Basin and Santa Fe County and protect its residents from the harmful or hazardous adverse effects or impacts of specific public nuisances resulting from oil and gas exploration, drilling, extraction, and transportation, including, but not limited to, degradation of air quality, global warming, storm-water and liquid materials run-off, ground and subsurface water quality, scenic quality, erosion of soils, noise and vibration, explosive hazards, traffic and road conditions, and any adverse effects and impacts of toxic chemical materials, degradation of wildlife and vegetation habitats and corridors;

(k) protect the scenic quality of Santa Fe County and its historic, cultural and archeological artifacts and sites;

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(l) ensure the compatibility of the proposed oil and gas project with existing development and development anticipated in the future pursuant to the County's adopted General Plan and relevant Area Plans, including but not limited to a Galisteo Basin Area Plan;

(m) assure that the required reclamation of oil and gas drilling areas that are disturbed by excavation activities is sufficient to provide for short- and long-term development meeting all environmental, infrastructure, health, safety, and aesthetic needs of the County and of surrounding properties and neighborhoods;

(n) assure the provision of adequate public facilities and services for roads, storm-water and liquid materials detention, police, fire and emergency response and off-site operation and maintenance for public roads and other facilities required to mitigate adverse effects and impacts of oil and gas facilities, are fully funded and available at the designated level of service ("LOS") at the time of development approval of Overlay Zoning;

(o) provide for a fair and efficient system for the engineering, planning, environmental regulation, and monitoring of oil and gas activities, both on and off site, consistent with and in coordination with the OCD and rules and regulations of the New Mexico Oil Conservation Commission ("Commission");

(p) protect the long-term usefulness of adjacent properties for their permitted purposes as identified in the County's adopted General and Area Plans;

(q) protect the tax and fiscal base of the County;

(r) establish performance standards for the exploration, drilling, extraction, processing, use, and transport of oil, gas and other earth materials, and unconsolidated sediments in such a manner as to ensure maximum protection to surrounding properties and to the physical environment through proper siting, clustering and co-location of activities, wells and structures, and through the use of time of operation, buffering, setbacks, visual screening, landscaping, height limitations, proper access routing, and appropriate noise, light, odor, vibration, air quality, and water quality controls;

(s) ensure that all permitted oil and gas activities are compatible with the County, regional, state, and federal water quality plans and storm-water management plans and policies;

(t) ensure that all permitted exploration, drilling, extraction and transportation activities are compatible with all current and applicable neighborhood plans, area or regional plans, public facility and utility plans, County policies, and the County's capital budget, plan and improvements program;

(u) coordinate with the underlying base zoning district; and

(v) comply with the findings and purposes of this Ordinance.

## SECTION 9.2. EXEMPTIONS FOR WATER RIGHTS.

These regulations do not apply to the determination or adjustment of water rights or for the regulation of extraction of potable water.

## SECTION 9.3. INCORPORATING GOALS.

This Chapter incorporates the goals, objectives, policies, and strategies in the General Plan Oil and Gas Element. All approvals of an Oil and Gas Overlay Zoning District Classification and subsequent Special Use and Development Permits, Building and Grading Permits and Certificates of Completion shall be consistent with the following plans:

(a) General Plan; including, but not limited to the Oil and Gas Element of the General Plan;

(b) any area plan, including but not limited to, the Galisteo Basin Area Plan;

(c) any capital improvement and services budget, plan and program, and the capital and operating budgets of the County and any adopted CIP for a public improvement or assessment district ;

(d) any public improvement or assessment district plan; and

(e) any State of New Mexico departmental plans, regulations, and statutes including but not limited to plans from the Energy, Minerals and Natural Resources Department, Office of the State Engineer, New Mexico Environment Department, Department of Game & Fish, Department of Cultural Affairs, Department of Indian Affairs, Department of Tourism, Department of Health, Department of Agriculture, and Gubernatorial Executive Orders.

## SECTION 9.4. APPLICATION CONSISTENCY.

Every application for an Oil and Gas Overlay Zoning District Classification must be consistent with the General Plan's goals, objectives, policies and strategies and the findings and purposes of this Ordinance. Every Ordinance and/or Resolution to approve or deny an Oil and Gas Overlay Zoning District Classification and all subsequent approvals or denials for the Special Use and Development Permit and any Grading or Building Permits and Certificate of Completion required by the Land Development Code shall be defined as Development Approvals and Development Orders.

## SECTION 9.4.1. SPECIAL PROVISIONS RELATED TO THE GALISTEO BASIN.

## SECTION 9.4.1.1. GALISTEO BASIN LAND AND ENVIRONMENTAL SUITABILITY ANALYSIS ("LESA") MAP.

(a) The Galisteo Basin is a highly unique and environmentally sensitive area of the County. A planning map of the Galisteo Basin is attached to this Ordinance as Exhibit "A."

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Within the Galisteo Basin are unique state and federally designated historical, cultural, and archaeological artifacts and sites; significant state and federally protected wildlife and vegetation habitats; corridors; streams, floodways, floodplains, groundwater aquifers and basins; mountainous slopes and hillsides; highly unusual, fragmented, and fractured sub-surface geological soils, rock, liquids and minerals susceptible to pollution of underground water reservoirs and aquifers; and traditional and historical Indian and community settlements, farms, and ranches, all combined with significant interspersed residential population growth, a poor transportation road network and limited fire, police, and emergency response services.

(b) The County has performed detailed studies of all of these factors from hundreds of documents, maps, reports, and professional analyses and has developed a composite Land and Environment Suitability Analysis Map ("LESA Map"), attached to this Ordinance as Exhibit "B," for the Galisteo Basin which describes areas that are unsuitable for oil and gas activities based on the following factors:

| **Oil/Gas Unsuitability Factors** | |
|---|---|
| **Factor 1** | **Farms/Ranches To Be Protected** |
| 1.1 | Farm/Ranch size less than 40 acres |
| 1.2 | farm/Ranch size less than 40 acres to 100 acres |
| 1.3 | farm/ranch size less greater than 100 acres |
| **Factor 2** | **Lands suitable for protecting native plant and animal species** |
| 2.1 | Lands with high amphibian species richness |
| 2.2 | Lands with high reptilian species richness |
| 2.3 | Lands with high bird species richness |
| 2.4 | Lands with high mammal species richness |
| 2.5 | Lands with undisturbed natural grasslands |
| 2.6 | Lands with undisturbed Pinon-Juniper Woodlands |
| 2.7 | Lands with undisturbed forested areas |
| **Factor 3** | **Lands suitable for Protecting Surface and groundwater quality** |
| 3.1 | Lands proximal to natural springs |
| 3.2 | Lands proximal permanent water bodies |
| 3.3 | Lands proximal to drainage buffers |
| 3.4 | Lands within Earth Works Riparian (and wetlands) Inventory |
| 3.5 | Lands proximal to quaternary alluvium geology |
| 3.6 | Lands soils classified as excessively or somewhat excessively drained |
| 3.7 | Lands with reservoir alluvium geology |
| **Factor 4** | **Lands with Important Physical Characteristics** |
| 4.1 | Lands within the 100-year floodplain |
| 4.2 | Steep slopes (greater than 30%) |
| **Factor 5** | **Areas of cultural, historical and archaeological importance** |
| 5.1 | Lands proximal to recorded archaeological, historical, and paleontological sites of demonstrated or potential significance |
| 5.2 | Lands proximal to major Pre-Columbian pueblo sites and zones of high |

| | |
|---|---|
| | archaeological or paleontological potential |
| 5.3 | Lands proximal to areas of importance to Native American groups (traditional cultural properties) |
| **Factor 6** | **Lands with scenic value** |
| 6.1 | Scenic Highways |
| 6.2 | Scenic dirt roads |
| 6.3 | Lands within Delphi-based scenic landmarks, outcrops, peaks, gaps and geologic features |
| **Factor 7** | **Lands unsuitable for oil/gas** |
| 7.1 | Lands proximal to community/public water system |
| 7.2 | Lands proximal to paved highway |
| 7.3 | Lands proximal to paved roadway |
| 7.4 | Lands proximal to fire station |
| 7.5 | Lands proximal to health care facilities |
| **Factor 8** | **Land use compatibility** |
| 8.1 | Identify lands proximal to designated conservation areas |

(c) The LESA Map shall be amended and updated at least once a year from the effective date of this Ordinance. Amendments to the LESA Map may be considered more often than annually when needed to account for the development of new or more accurate information.

(d) Limited Oil and Gas Activity Areas:

(1) LESA Map Classifications. Based upon the analysis of the factors as applied to the Galisteo Basin, the LESA Map classifies lands within the Galisteo Basin for oil and gas activities as:

(A) High Sensitivity Areas;

(B) Moderate Sensitivity Areas; and

(C) Low Sensitivity Areas.

(2) This Ordinance is consistent and in compliance with the OCD and Commission proposed and existing regulations relating to well spacing. The following sections supplement and complement the OCD regulations by regulating the number of drill sites permitted based on the sensitivity classification of surface lands. This Ordinance does not regulate well spacing.

(3) High Sensitivity Areas:

(A) In the High Sensitivity Areas oil and gas activity will create adverse public nuisance and land use effects and impacts upon the

critical assets of the Galisteo Basin as set forth in Section 9.4.1.1(a). Oil and gas activity will be constrained so that the area of land does not authorize a greater number of oil and gas drill sites than ten percent (10%) of the number of wells allowed by the applicable OCD spacing rules. By example: each square mile (640 acres) of oil and gas project land without constraint would contain a maximum of sixteen (16) oil and gas wells taking into account that the applicable OCD spacing rule 19.15.3.104 NMAC provides for one (1) well for each forty (40) acres. If located within a High Sensitivity Area on the LESA Map it would be permitted 1.6 drill sites per square mile. The final number of oil or gas drill sites project-wide will be rounded off to the next highest integer.

(B) The number of drill sites permitted under the LESA Map is a maximum number. Each specific assessment, study, report, or plan may require that fewer or no oil and gas drill sites be authorized based upon the unique requirements of the project area's mitigation requirements to avoid further specific adverse public nuisance and/or land use effects and impacts from oil and gas drill site locations. The drill site pad should be the least amount of land necessary to operate the drill site.

(C) For each well, the surface area shall not exceed ½ acre and total surface acreage for all drill sites-in High Sensitivity Areas shall not in any event exceed five (5) acres per square mile. The Board may upon application increase such acreage on case by case basis if there is an affirmative recommendation from a petroleum Engineer employed by the County certifying reasonable need, or to accommodate a transfer of development rights not to exceed one (1) acre in total size. The drill site pad shall be the least amount of land necessary to operate the drill site.

(D) Proposed oil or gas facilities within High Sensitivity Areas will be permitted to purchase development rights from other proposed oil or gas facilities that, after a beneficial use and value determination, would not be allowed any oil or gas drill sites. For each forty (40) acre sending area transferring a development right ("TDR"), the High Sensitivity Area receiving the TDR will be permitted to add an additional 0.3 oil and gas drill sites.

(4) Moderate Sensitivity Areas:

(A) In the Moderate Sensitivity Areas oil and gas activity will create adverse public nuisance and land use effects and impacts upon the critical assets of the Galisteo Basin as set forth in Section

9.4.1.1.(a). Oil and gas activity will be constrained so that the area of land does not authorize a number of oil and gas drill sites greater than thirty percent (30%) of the number of wells allowed by the applicable OCD spacing rules. By example: each square mile (640 acres) of project land would contain a maximum of sixteen (16) oil and gas wells taking into account that the applicable OCD spacing rule 19.15.3.104 NMAC provides for one (1) well for each forty (40) acres. If located within a Moderate Sensitivity Area on the LESA Map it would be permitted 4.8 drill sites per square mile. The final number of oil or gas drill sites project-wide will be rounded off to the next highest integer.

(B) The number of drill sites permitted under the LESA Map is a maximum number. Each specific assessment, study, report, or plan may require that fewer or no oil and gas drill sites be authorized based upon the unique requirements of the project area's mitigation requirements to avoid further specific adverse public nuisance and/or land use effects and impacts from oil and gas drill site locations. The drill site pad should be the least amount of land necessary to operate the drill site.

(C) For each well, the surface area shall not exceed ½ acre and total surface acreage for all drill sites in Moderate Sensitivity Areas shall not in any event exceed seven (7) per square mile. The Board may upon application increase such acreage on case by case basis if there is an affirmative recommendation from a petroleum Engineer employed by the County certifying reasonable need, or to accommodate a transfer of development rights not to exceed two (2) acres in total size. The drill site pad shall be the least amount of land necessary to operate the drill site

(D) Proposed oil or gas facilities within Moderate Sensitivity Areas will be permitted to purchase development rights from other proposed oil or gas facilities that after a beneficial use and value determination would not be allowed any oil or gas drill sites. For each forty (40) acre sending area transferring a development right ("TDR"), the Moderate Sensitivity Area receiving the TDR will be permitted to add an additional 0.8 oil and gas drill sites.

(5) Low Sensitivity Areas:

A) In the Low Sensitivity Areas oil and gas activity will create adverse public nuisance and land use effects and impacts upon the critical assets of the Galisteo Basin as set forth in Section 9.4.1.1.(a). Oil and gas activity will be constrained so that the area of land does not authorize a greater number of oil and gas drill

sites than forty percent (40%) of the number of wells allowed by the applicable OCD spacing rules. By example: each square mile (640 acres) of project land could contain a maximum of sixteen (16) oil and gas wells taking into account that the applicable OCD spacing rule 19.15.3.104 NMAC provides for one (1) well for each forty (40) acres. If located within a Low Sensitivity Area on the LESA Map it would be permitted only 6.4 drill sites per square mile. The final number of oil or gas drill sites project-wide will be rounded off to the next highest integer.

(B) The number of drill sites permitted under the LESA Map is a maximum number. Each specific assessment, report, or plan may require that fewer or no oil and gas wells be authorized based upon the unique requirements of the project area's mitigation requirements to avoid adverse public nuisance effects and impacts from oil and gas specific well locations. The drill site pad should be the least amount of land necessary to operate the drill site.

(C) For each well, the surface area shall not exceed ½ acre and total surface acreage for all drill sites in Low Sensitivity Areas shall not in any event exceed nine (9) acres per square mile. The Board may upon application increase such acreage on case by case basis if there is an affirmative recommendation from a petroleum Engineer employed by the County certifying reasonable need, or to accommodate a transfer of development rights not to exceed three (3)acres in total size. The drill site pad shall be the least amount of land necessary to operate the drill site.

(D) Proposed oil or gas facilities within Low Sensitivity Areas will be permitted to purchase development rights from proposed oil or gas facilities that after a beneficial use and value determination would not be allowed any oil or gas drill sites. For each forty (40) acre sending area transferring a development right ("TDR"), the Low Sensitivity Area receiving the TDR will be permitted to add an additional 2.0 oil and gas wells.

**SECTION 9.5. OTHER REQUIRED DEVELOPMENTAL APPROVALS.**

(a) Oil and gas activities include a broad range of land disturbance activities, which require approval of an Oil and Gas Overlay Zoning District Classification, a Special Use and Development Permit ("SUDP"), grading or building permits and a Certificate of Completion and may require other local, state, and federal development approvals. It is the sole responsibility of the applicant to secure all development approvals required by other governmental entities for the proposed use. The County shall require that the State OCD approve an application for a permit to drill be issued prior to applying for the

required SUDP, and to require the applicant to submit evidence of such other development approvals to the County as part of the SUDP application.

(b) Applicants are not required to apply for subdivision approval for oil and gas activities located in the subsurface of a single parcel of land unless the activity constitutes a subdivision or platting of two or more such lots or parcels, with the intent to sell or lease such subsurface subdivided lots or parcels in the future.

**SECTION 9.6. APPLICATION FOR OIL AND GAS OVERLAY ZONING DISTRICT.**

An applicant who submits an application for approval of an Oil and Gas Overlay Zoning District Classification shall submit a concept plan that includes:

(1) An accurate map of the project area including its relationship to surrounding areas, existing topography and key features;

(2) A detailed description of the proposed oil and gas activities on the entirety of the owner or applicant's property in the same ownership:

(a) The planning objectives and the character of the development to be achieved through the overlay, and the approximate phases in which the exploration and drilling for and extraction of oil and gas from the property will occur.

(b) The approximate location of all neighboring development areas, subdivisions, residential dwellings, neighborhoods, traditional communities and community centers, and other non-residential facilities and structures within five (5) miles of the concept plan site perimeter.

(c) The number and type of wells to be drilled, and the approximate location, arrangement, size, floor area ratio of any buildings and structures and parking facilities related to the drilling or exploratory activities.

(d) The proposed traffic circulation plan, including number of daily and peak hour trips to and from the site and the proposed traffic routes to the nearest intersection with I-25 (and NM-285 if located in the Galisteo Basin).

(e) The approximate or exact location of all fire, police, and emergency response service facilities and all roads shown on the capital improvement plan, budget and program for the area, floodways, floodplains, wetlands or other natural resource areas surrounding the applicant's property; location of historic, cultural and archeological sites and artifacts, steep slopes greater than 11%, wildlife and vegetation habitats and habitat corridors within five (5) miles of the concept plan site perimeter.

(f) A statement explaining how the proposed overlay complies with the vision, goals, objectives, policies and strategies of the County's General Plan Oil and Gas

Element and any Area Plan covering the property, including but not limited to, the Galisteo Basin Area Plan.

(g) A statement or visual presentation of how the overlay will relate to and be compatible with adjacent and neighboring areas, within the five (5) mile radius of the project site perimeter.

(h) All application requirements set out in this Ordinance.

(3) All information required by the Administrator for the preparation of assessments, reports, plan or studies necessary to evaluate adverse effects and impacts of the proposed oil and gas project. The following assessments, reports, plan and studies will be prepared by the County, or by a professional consultant or consulting firm engaged by the County. The applicant, at the time of submission of the application, shall pay by certified check or furnish a suitable letter of credit from a banking institution, payable to the County at the time of the application for the cost to the County for retaining consultants and for the cost of a Hearing Officer presiding over the pre-application meeting, for each of the following required studies:

(a) Environmental Impact Report (See Section 9.6.1);

(b) Adequate Public Facilities and Services Assessment (See Section 9.6.2);

(c) Water Availability Report (See Section 9.6.4);

(d) Traffic Impact Assessment (See Section 9.6.5);

(e) Geohydrologic Report (See Section 9.6.6);

(f) Emergency Response and Preparedness Plan (See Section 9.6.7); and

(g) Fiscal Impact Assessment (See Section 9.6.8)

(4) Such other information as the Administrator shall require, including any additional information necessary to determine compliance with the standards for the approval of the Oil and Gas Overlay Zoning District Classification.

(5) The applicant shall submit all information at the time of application, required by the County necessary to carry out the above studies, reports, plan and assessments. In addition to the assessments, reports, plan or studies to be conducted by the County, listed in Section 9.6(3)(a) – (g) above, the applicant and any other interested party shall have the opportunity to prepare and furnish to the County its own assessments, plan, reports or studies, or parts thereof, as is deemed suitable and necessary.

(6) Prior to the submission of any application for an Oil and Gas Overlay Zoning District Classification, the applicant shall attend a meeting with all residents, owners/lessees of non-residential structures, and all owners of subsurface mineral estates and oil and gas lessees within

one mile of the perimeter of the project area and with all County groups, foundations and associations that have previously registered with and been accepted by the Administrator for notifications of applications for an Oil and Gas Overlay Zoning District Classifications and Special Use and Development Permits within the County. The applicant shall furnish an address list for the one-mile area to the Administrator who shall send out notices to all affected parties at least five business days prior to the meeting. Such meeting shall be conducted at the offices of the Growth Management Division and shall be presided over by a designated County Hearing Officer. The proceedings shall be informal and designed to resolve, to the extent possible, issues and problems between the parties. Such meeting shall not last longer than three (3) hours without the consent of the applicant, and the Hearing Officer shall have the authority to request invitees to consolidate presentations and otherwise cooperate so that effective and cordial discussion of issues and problems takes place.

(7) The Applicant shall provide certified evidence of public record registration of mineral estate and oil or gas leases within the same ownership.

(8) Existing water wells may be documented by any official document such as deeds and surveys, not exclusively by registration with the Office of State Engineer.

**SECTION 9.6.1. ENVIRONMENTAL IMPACT REPORT.**

**9.6.1.1. Generally.**

(a) The draft Environmental Impact Report ("draft EIR") shall contain the information outlined in this Section. Each element shall be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.

(b) The draft EIR shall be prepared as a separate document by the consultants engaged by the County.

(c) A Draft EIR shall contain the information required by Sections 3 through 12. A Final EIR shall contain the same information and the subjects described in Section 13.

(d) No document prepared pursuant to this article that is available for public examination shall require the disclosure of a trade secret, except where the use of any trade secret involves a significant threat to health and safety. However, only specifically identified chemicals shall be used for any project, including, but not limited to drilling and excavation. The Administrator shall supply a list to each applicant of the approved chemicals, certified by a licensed petroleum engineer, which the applicant must certify as exhaustive of all chemicals that will be used in the project. No specific location of archaeological, historical or cultural sites and/or sacred lands shall be released to the public, but a draft EIR must thoroughly discuss all environmental issues relating to a proposed project and affecting any such sites.

(e) The applicant shall make a cash, certified or bank check, or letter of credit, deposit, to cover all of the County's expenses in reviewing the draft EIR, engaging consultants,



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and for a Hearing Officer to conduct the first public hearing on the draft EIR. The County will provide an estimate of the cost of conducting the study, which shall provide the basis for the initial deposit. The applicant shall make additional deposits if the initial deposit is inadequate to reimburse the County for the costs of the study, and the County shall refund any unexpended funds on deposit after the study is completed.

**9.6.1.2. Informational Document.**

(a) The draft EIR is an informational document which will inform the County, the public and the applicant of the significant adverse environmental effects and impacts of a project, identify possible ways to minimize the significant adverse effects or impacts, and describe reasonable alternatives to the project. The County shall consider the information in the draft EIR along with other information which may be presented to the County by the applicant or interested parties.

(b) While the information in the draft EIR does not control the County's ultimate discretion on the project, the County shall respond to each significant effect and impacts identified in the EIR by making findings.

(c) The information in a draft EIR shall constitute substantial evidence in the record to support the County's action on the project if its development order is subsequently challenged in court.

**9.6.1.3. Table of Contents and Index.**

The draft EIR shall contain a table of contents and index to assist readers in finding the analysis of different subjects and issues.

**9.6.1.4. Summary.**

(a) A draft EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical.

(b) The summary shall identify:

(1) Each significant adverse effect and impact with proposed mitigation measures and alternatives that would reduce or avoid that effect or impact;

(2) Areas of controversy known to the County including issues raised by agencies and the public; and

(3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

(c) The summary shall not exceed 15 pages.

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**9.6.1.5. Project Description.**

The description of the project shall contain the following information but shall not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed oil or gas facility containing all mineral estate fee interests, or oil and gas leases in the same ownership. Such location and boundaries shall be shown on a detailed topographical map. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed oil or gas facility. A clearly written statement of objectives will help the County develop a reasonable range of alternatives to evaluate in the draft EIR and will aid the Board in preparing findings. The statement of objectives should include the underlying purpose of the project.

(c) A general description of the oil and gas project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the draft and final EIRs.

(1) This statement shall include, to the extent that the information is known to the County,

(A) A list of the state, regional and federal agencies that may be expected to use the EIRs in their decision-making, and

(B) A list of permits and other governmental approvals required to implement the project.

(C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies.

(2) All the development approvals required for the oil and gas project shall be listed in the order in which they will occur.

**9.6.1.6. Environmental Setting.**

(a) A draft EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a County, sub-county area, regional, and state perspective. This environmental setting will normally constitute the baseline physical conditions by which the County determines whether an adverse effect or impact is significant. The description of the environmental setting shall be no

longer than is necessary to an understanding of the significant effects of the proposed oil and gas project and its alternatives.

(b) Knowledge of the County and regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to the County and region and would be affected by the project. The draft EIR must demonstrate that the significant environmental effects and impacts of the proposed project were adequately investigated and discussed and it must permit the significant adverse effects or impacts of the project to be considered in the full environmental context.

(c) The draft EIR shall discuss any inconsistencies between the proposed oil or gas facility and the General Plan and the General Plan Oil and Gas Element and any applicable Regional Plans or Area Plan, including, but not limited to, the Galisteo Basin Area Plan. Regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan, area-wide waste treatment and water quality control plans, regional transportation-land use plans, habitat conservation plans, natural community conservation plans, historic, cultural and archaeological site and preservation plans.

(d) Where a proposed oil or gas facility is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced as well as the potential future conditions discussed in the plan.

**9.6.1.7.1. Consideration and Discussion of Environmental Impacts.**

All phases of an oil and gas project must be considered when evaluating its effect and impact on the environment: planning, acquisition, development, and operation. The subjects listed below shall be discussed as directed in Sections 9.6.1.7.2, 9.6.1.7.3, and 9.6.1.7.4, preferably in separate sections or paragraphs of the draft EIR. If they are not discussed separately, the draft EIR shall include a table showing where each of the subjects is discussed.

(a) Significant Environmental Effects of the Proposed Project.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented.

(c) Significant Irreversible Environmental Changes Which Shall be Involved in the Proposed Project Should It be Implemented.

(d) Growth-Inducing Adverse Effects or Impacts of the Proposed Project.

(e) The Mitigation Measures Proposed to Minimize or Eliminate the Significant Effects or Impacts.

(f) Alternatives to the Proposed Project, Including No Oil or Gas Drilling

**9.6.1.7.2. Consideration and Discussion of Significant Environmental Impacts.**

(a) The Significant Environmental Effects of the Proposed Oil and Gas Project. A draft EIR shall identify and focus on the significant environmental effects of the proposed oil and gas facility. In assessing the impact of a proposed oil and gas project on the environment, the County shall limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects and impacts of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects and impacts. The discussion shall include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, changes induced in the human use of the land, health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical, cultural and archaeological resources, scenic quality, and adequacy of public facilities and services. The draft EIR shall also analyze any significant environmental effects the facility might cause by bringing development, and/or subsurface drilling projects into the area affected. For example, a draft EIR on an oil and gas facility astride an active fault line or other geological condition threatening to degrade ground water resources should identify as a significant effect the seismic and geo-hydrological hazard.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Oil and Gas Project is Implemented. Describe significant adverse effects and impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are effects and impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the oil and gas project is being proposed shall be described.

(c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Oil and Gas Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the oil and gas project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary effects and impacts and, particularly, secondary effects and impacts (such as highway improvements required to provide access to a previously inaccessible area) generally commit future generations to similar uses. Irreversible damage can result from environmental accidents, spills, explosions or fires associated with the oil and gas project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified. Any and all potential effects on global warming attributable to the Oil or Gas Facility must be thoroughly analyzed, including necessary mitigation to minimize such effects and impacts. Applicant must comply with all New Mexico state statutes and regulations regarding global warming. In addition, Applicant must use the best available technology to analyze, report and mitigate any global warming effect associated with the Oil or Gas Facility.

(d) Other Adverse Effects or Growth-Inducing Impacts of the Proposed Project. Discuss other characteristics of the project which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. Discuss the characteristics of the project, especially the drilling aspect of the project, which may decrease the

area's suitability for other uses such as residential, commercial, historical, cultural, archaeological, environmental, eco-tourism or scenic uses.

**9.6.1.7.3. Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.**

(a) Mitigation Measures in General.

(1) The draft EIR shall describe feasible measures which could minimize significant adverse effects and impacts, including inefficient and unnecessary consumption of energy and irreversible pollution attributable to the project that contributes to global warming.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by oil and gas facility proponents to be included in the project and other measures proposed by the County or other interested persons which are not included but the County determines could reasonably be expected to reduce adverse effects and impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the draft EIR.

(B) Where several measures are available to mitigate an effect or impact, each shall be discussed and the basis for selecting a particular measure shall be identified. Formulation of mitigation measures shall not be deferred until the Special Use and Development Permit Phase. Measures shall specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.

(D) If a mitigation measure would cause one or more significant effects and impacts in addition to those that would be caused by the project as proposed, the adverse effects and impacts of the mitigation measure shall be discussed.

(2) Mitigation measures must be fully enforceable through the development order conditions, a development agreement, or other legally-binding instruments.

(3) Mitigation measures are not required for effects or impacts which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements.

(b) Mitigation Measures Related to Effects and Impacts on Historical, Cultural and Archaeological Resources.

(1) In some circumstances, documentation of a historical, cultural, or archaeological resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the adverse effects and impacts of demolition of the resource will not mitigate the effects and impacts to a point where clearly no significant effect or impact on the environment would occur.

(2) The County should, whenever feasible, seek to avoid adverse effects and impacts on any historical resource of a cultural or archaeological nature. The following factors shall be considered and discussed in the draft EIR for an oil and gas facility involving such a cultural, historic or archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to historic, cultural or archaeological sites. Preservation in place maintains the relationship between artifacts and the historical, cultural, and archaeological context. Preservation shall also avoid conflict with religious or cultural values of Indian communities associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following:

1. Planning construction to avoid all historical, cultural or archaeological sites;

2. Incorporation of sites within parks, greenspace, or other open space;

(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical, cultural, or archaeological resource, shall be prepared and adopted prior to any excavation being undertaken. If an artifact must be removed during project excavation or testing, curation may be an appropriate mitigation.

(D) Data recovery shall not be required for an historical, cultural or archaeological resource if the County determines that testing or studies already completed have adequately recovered the

scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the draft EIR.

**9.6.1.7.4. Consideration and Discussion of Alternatives to the Proposed Project.**

(a) Alternatives to the Proposed Project. The draft EIR shall describe a range of reasonable alternatives to the project, or to the location, number of wells or co-location of wells of the project, which would feasibly attain some of the basic objectives of the project but would avoid or substantially lessen all of the significant and adverse impacts or effects of the project, and evaluate the comparative merits of the alternatives. A draft EIR is not required to consider alternatives which are infeasible. The County shall select the range of project alternatives for examination and shall publicly disclose its reasoning for selecting those alternatives.

(b) Purpose. Because the draft EIR must identify ways to mitigate or avoid the significant and adverse impacts and effects that an oil and gas project may have on the environment, the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede the attainment of the project objectives, or would be more costly.

(c) Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish some of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The draft EIR should briefly describe the rationale for selecting the alternatives to be discussed. The draft EIR should also identify any alternatives that were considered by the County but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the County's determination.

(d) Evaluation of alternatives. The draft EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant or adverse environmental effects and impacts of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant or adverse effects or impacts in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed.

(e) "No project" alternative.

(1) The specified alternative of "no project" shall also be evaluated along with its effects and impacts. The purpose of describing and analyzing a no project alternative is to allow the County to compare the adverse effects and impacts of approving the proposed project with such effects and impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental effects or impacts may be significant or adverse, unless it is

identical to the existing environmental setting analysis which does establish that baseline.

(2) The "no project" analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the oil and gas project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the "no project" alternative, the draft EIR shall also identify an environmentally superior alternative among the other alternatives.

(3) A discussion of the "no project" alternative shall proceed as follows:

(A) The "no project" alternative is the circumstance under which the oil and gas project does not proceed. Discussion shall compare the environmental effects of the property remaining in its existing state against the environmental and adverse public nuisance effects and impacts which would occur if the project were to be approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other oil and gas project, this "no project" consequence should be discussed. In certain instances, the no project alternative means "no build" and/or "no drill" so the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval.

(B) After defining the no project alternative using one of these approaches, the County shall proceed to analyze the effects and impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

(f) Rule of reason. The range of alternatives required in the draft EIR is governed by a "rule of reason" that requires the draft EIR to set forth those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant adverse effects or impacts of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(1) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic use



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and value viability, availability of infrastructure, general plan and area plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a significant effect or impact should consider the county wide context), and whether the applicant can reasonably acquire, control or otherwise have access to an alternative site in the same ownership. No one of these factors establishes a fixed limit on the scope of reasonable alternatives.

(2) Alternative locations.

(A) Key question. The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location within the same ownership. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the draft EIR.

(B) None feasible. If the County concludes that no feasible alternative locations within the same ownership exist, it must disclose the reasons for this conclusion, and should include the reasons in the draft EIR.

(3) The draft EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

**9.6.1.8. Organizations and Persons Consulted.**

The draft EIR shall identify all federal, state, or local agencies, Indian communities, or other organization, and interested persons consulted in preparing the draft EIR.

**9.6.1.9. Discussion of Cumulative Impacts.**

(a) The draft EIR shall discuss cumulative effects and impacts of a project when the project's incremental effect and impact is cumulatively considerable.

(1) A cumulative effect and impact is created as a result of the combination of the project evaluated in the draft EIR together with other oil and gas projects causing related effects and impacts. A draft EIR should not discuss other project effects and impacts which do not result in part from the oil and gas project evaluated in the draft EIR.

(b) The discussion of cumulative effects and impacts shall reflect the severity of the effects and impacts and their likelihood of occurrence. The discussion should focus on the cumulative effects and impacts to which the identified other projects contribute rather than the

attributes of other projects which do not contribute to the cumulative effect and impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and probable future oil and gas projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the County, or

(B) A summary of projections of other residential, commercial, industrial, agricultural or mining development contained in the general plan oil and gas element or in the LESA Map and Factors describing the Galisteo Basin area conditions contributing to the cumulative impact.

(2) When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related oil and gas project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue or when an impact is specialized, such as a particular air pollutant or mode of traffic.

(3) The County shall define the geographic scope of the area affected by the cumulative effect and impact and provide a reasonable explanation for the geographic scope utilized.

(4) A summary of the expected environmental effects to be produced by those projects with the specific reference to additional information stating where that information is available, and

(5) A reasonable analysis of the cumulative impacts of the relevant projects. A draft EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects or impacts.

(c) Approved land use documents including the General Plan, the General Plan Oil and Gas Element, Area Plans, including but not limited to the Galisteo Basin Area Plan shall be used in cumulative impact analysis. A pertinent discussion of cumulative effects and impacts, contained in one or more previously certified final EIR oil and gas projects may be incorporated by reference.

**9.6.1.10 Procedures For Adopting the Draft EIR.**



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**9.6.1.10.1.**

Two public hearings shall be held by a Hearing Officer prior to submission of the draft EIR to the Board for consideration and adoption of a Final EIR.

**9.6.1.10.2.**

The first public hearing shall be held early in the process of gathering data and information, so that the public has the opportunity to input into the EIR process. The second public hearing shall be held upon the consultants' completion of the draft EIR. Upon receiving public comments, testimony and evidentiary exhibits at the first public hearing, the Hearing Officer shall forward such information to the consultants for inclusion in the draft EIR that will be forwarded to the Board for consideration in adopting the Final EIR.

**9.6.1.11. Contents of Final Environmental Impact Report.**

The final EIR shall consist of:

(a) The draft EIR or a revision of the draft.

(b) Comments and recommendations received on the draft EIR either verbatim or in summary by the applicant.

(c) The responses and recommendations of interested persons, organizations, Indian communities and State, Federal, or other public agencies and utilities commenting on the draft EIR.

(d) The responses of the County to significant environmental points raised in the review and consultation process.

(e) Any other information added by the County.

**9.6.1.12. Adoption of Final Environmental Impact Report.**

The final EIR shall be adopted by the Board at the public hearing held concurrently for t development approval of the application for an Oil and Gas Overlay Zoning District Classification.

**SECTION 9.6.2. ADEQUATE PUBLIC FACILITIES AND SERVICES ASSESSMENT.**

**SECTION 9.6.2.1. PURPOSE AND FINDINGS.**

An adequate public facilities and services assessment ("APFA") ties a development approval of an application for an Oil and Gas Overlay Zone District Classification to the availability of infrastructure and public service capacity measured by adopted levels of service (LOS) in the Capital Improvement Plan, Budget and Program.

The APFA shall be used to deny overlay zoning applications or to time and sequence the oil and gas project based on availability of public facilities and public services as shown in an adopted, funded, and prioritized capital improvements plan, budget and program (CIP). A public improvement or assessment district assessment, rates, taxes or charges and provision in development agreements shall also be used for financing off-site infrastructure and public services attached to development approvals.

The applicant shall make a cash, certified or bank check, or letter of credit, deposit, to cover all of the County's expenses in reviewing the APFA, engaging consultants, and for a Hearing Officer to conduct the first public hearing on the APFA. The County will provide an estimate of the cost of conducting the study, which shall provide the basis for the initial deposit. The applicant shall make additional deposits if the initial deposit is inadequate to reimburse the County for the costs of the study, and the County shall refund any unexpended funds on deposit after the study is completed.

An APFA is required prior to consideration by the Board of an application for an Oil and Gas Overlay Zoning District Classification as follows:

(a) Adequate public facilities and services ("APF"): These include water, stormwater and liquid material management and detention, police, emergency response services, fire protection, solid waste, and roads.

(b) Establishing Levels of Service: Levels of service shall be established in the CIP, attached to this Ordinance as Exhibit "C".

(c) Existing facilities: When determining whether adequate capacity exists, both existing facilities and service capabilities and those included in the CIP are counted.

(d) Reservation of capacity: When an oil and gas project is reviewed, the amount of pipeline capacity it utilizes must be debited against available capacity for future projects.

(e) Application: If the LOS is not met, development approval can either be denied or the development may be timed and sequenced so that future stages of the project are approved only when adequate public facilities and services are available. Oil and gas projects are given the option to voluntarily advance capacity through a development agreement in order to obtain development approval.

**9.6.2.2 Determination of Adequacy of Public Facilities and Services.**

The APFA shall determine that:

(a) The application meets APF standards where public facilities and services are available at the adopted LOS.

(b) The application shall be denied where adequate public facilities and services are not available at the adopted LOS; or

(c) The application shall be approved conditioned to timing, sequencing and phasing of development of oil and gas wells until all public facilities and services are available for the year the CIP shows that facilities and services will be built and available if public facilities and services in the impact area are not presently adequate to meet the adopted LOS for the entire oil and gas project, in the same ownership, consistent with the requirements of Table 3-1 in section 9.6.3.1.

**9.6.2.3 Oil and Gas Overlay Zoning District Classification Adverse Effects and Impacts**

An Oil and Gas Overlay Zoning District Classification may create a range of potential adverse effects and impacts and shall be reviewed as if the greatest adverse effect and impact results. The review of adequacy of public facilities and services for the application shall compare the capacity of public facilities and services to the maximum projected demand that may result from the proposed overlay zoning based upon the maximum density of oil and gas wells in the project and relevant affected areas. The adequacy of roads and highways shall be considered in relation to the full weight load of trucks and tankers carrying oil to refineries. Nothing in this section authorizes a development approval that would otherwise be inconsistent with the General Plan or any Area Plan.

**9.6.2.4. Scope of Adequate Public Facilities and Services Assessment**

A determination of adequacy of public facilities and services for an oil and gas project finds that:

(a) Public facilities and services are available at the time of issuance of a development order approving the Oil and Gas Overlay Zoning District Classification; and

(b) Public facilities and services are deemed to be available at all subsequent stages of the development approval process through approval of a Special Use and Development Permit, Grading and Building Permits and the Certificate of Completion. Availability of facilities and services, present and future, shall be assured through a development agreement between the applicant and the County, in which case the public facilities will be considered to be available for the duration of the development agreement.

**9.6.2.5. Duration**

A development order determining that public facilities and services are adequate is valid until the earlier of one of the following:

(a) The expiration of the development order or development agreement; or

(b) If no expiration period is provided in the development order or development agreement, the determination expires unless construction commences on at least one oil and gas well within two years after approval, and on at least 25 percent of all of the oil and gas wells within three years after approval.

**9.6.2.6.1 Advancement of Public Facilities and Services Capacity.**

In order to avoid denial or phasing of the oil or gas facility under the APF standards the applicant may voluntarily propose, through entering into a development agreement with the County, to construct or to secure funding for the public facilities and services necessary to provide capacity to accommodate the proposed development at the adopted LOS and at the time that the impact of the development will occur as an alternative to the denial or deferral of development consistent with the requirements of this section. Such development agreement may require an applicant to pay more than its roughly proportional share of infrastructure needs generated by the proposed oil or gas facility subject to subsequent reimbursement when appropriate.

**9.6.2.6.2. Standards.**

No advancement of capacity for public facilities and services needed to avoid a deterioration in the adopted LOSs shall be accepted by the County unless:

(a) The proposed public facility is a prioritized and funded capital improvement shown in the adopted CIP; or

(b) Appropriate conditions shall be included to ensure that the applicant will obtain any necessary approvals for construction of the public facilities from any agency other than the County.

**9.6.2.6.3. Construction Commitment.**

The commitment for construction or advancement of public facilities and services prior to the oil and gas overlay zoning approval shall be included as a condition of the development approval. The commitment shall contain, at a minimum, the following:

(a) For planned capital improvements or services, either a finding that the planned capital improvement or service is included within the CIP for the year in which construction of the project is scheduled or the applicant commits to advancing the facilities and services;

(b) An estimate of the total financial resources needed to construct or expand the proposed public facilities and services, and a description of the incremental cost involved;

(c) A schedule for commencement and completion of construction or expansion of the planned capital improvement and service with specific target dates for multiphase or large-scale capital improvements projects;

(d) A statement that the planned capital improvement and service is consistent with the General Plan, any Area Plan and the County's CIP;

(e) A statement that the planned capital improvement and service is consistent with any ordinances relating to the construction and design of the public facility and service; and

(f) If the planned capital improvement and public service proffered by the applicant will provide capacity exceeding the demand generated by the proposed oil and gas project, but is needed to meet past deficiencies reflected in the overall capacity needed for the project, reimbursement shall be offered to the applicant for the pro rata cost of the excess capacity for the year in which the capital facility or service would have been built as shown in the prioritized CIP or from any funds paid by subsequent oil and gas development projects.

**9.6.2.7. Partial Construction or Funding.**

The construction or funding of only a portion of a public facility or service needed to meet the adopted LOS shall be approved only where:

(a) The public facility will be able to provide the capacity needed to meet the adopted LOS, and will be fully usable and operational, due to the characteristics of the facility; or

(b) The construction or funding of the balance of the public facility that is needed to meet the adopted LOS will be generated from other sources.

**9.6.2.8. Financing of Adequate Public Services**

The applicant for an Oil and Gas Overlay Zoning District Classification shall provide for annual funding of all fire, police and emergency response services and county road maintenance and repair, the need for which is generated by the oil and gas project, to the extent that the property tax revenues from the project are inadequate to cover such annual funding. Such annual funding shall be provided for in the development agreement to be entered into between the County and the applicant as a condition of development approval of the Oil and Gas Overlay Zoning District Classification. If additional Oil or Gas Facilities are approved, the annual funding contribution shall be apportioned among all projects so approved.

**9.6.3. METHODOLOGY.**

**9.6.3.1. Methodology.**

No determination as to compliance with this section shall be recommended by the County unless adequate public facilities and services are available at the adopted level of service set forth in Table 3-1 as follows:

| Facilities & Services | Level of Service (LOS) per 1,000 Residents* |
|---|---|

| Fire Department | |
|---|---|
| Vehicles (Number) | 1.55 |
| Building (GSF) | 1,977 |
| Personnel (Number, Career & Volunteer) | 4.27 |
| Average Response Time (2006; approx) | 10 mins |
| Fire Station Service Area (est) | 4 miles |
| ISO Rating | 7/9 |
| **Sheriff's Department** | |
| Vehicles (Number) | 1.82 |
| Building (GSF) | 91 |
| Personnel (Number, Career) | 1.44 |

| Average Response Time (2007; approx): | |
|---|---|
| Priority 1 | 26 mins |
| Priority 2 | 24 mins |
| Priority 3 | 41 mins |
| Priority 4 | 27 mins |
| Priority 5 | 21 mins |
| Priority 7 | 36 mins |
| **Roads** | |
| Road Capacity | LOS "C" |
| Road Design | *See* Subdivision Regulations (§8.2, App 5.A, App B.1-B.3) |

**9.6.3.2. Level of Service Standards.**

Compliance with LOS standards shall be measured for each public facility and service set forth in Column (A) of Table 3-1 in accordance with the corresponding standards set forth in Column (B) of Table 3-1.

**9.6.3.3. Adequacy of Public Facilities.**

Public facilities and services shall be adequate if it is demonstrated that they have available capacity at the adopted LOS to accommodate the demand generated by the proposed Oil or Gas Facility as well as committed pipeline Oil or Gas Facilities and other residential and non-residential development approvals in accordance with the following calculation methodology:

(a) Calculate total capacity by adding together the total capacity of each public facility and service.

(b) Calculate available capacity by subtracting from the total capacity the sum of:

(1) The demand for each public facility and service created by existing oil and gas project;

(2) The demand for each public facility created by the anticipated completion of committed oil and gas project pipeline projects; and

(3) The demand for each public facility created by the anticipated completion of the proposed oil and gas project under consideration for determination.

**9.6.3.4. Mitigation.**

The APFA shall consider mitigation measures for alleviating public facility and service inadequacy:

(a) Phasing, timing and sequencing the subsequent SUDP so that no SUDP development order is issued before roads, fire, police, emergency service or stormwater drainage facilities needed to achieve the LOS standard are constructed; and

(b) Measures that allow the road network to function more efficiently by adding sufficient capacity to the off-site road system. Such mitigation measures may include, but are not limited to, pavement widening, turn lanes, median islands, access controls, or traffic signalization. All private roads must meet the same standards as provided for public roads in the Santa Fe County Oil and Gas and Growth Management Elements. Private roads will only be permitted if the Applicant enters into a development agreement for which construction, operation, maintenance standards and financial terms will be provided in the development agreement.

**9.6.3.5. Fire, Police, and Emergency Services.**

Needed fire flow shall be determined in accordance with the Insurance Services Office, "Fire Suppression Rating Schedule" (June 1980 edition). In determining the effect and impact of the proposed development on fire, police, and emergency service LOS, the County shall primarily take into consideration response times, and the number and location of available apparatus and fire, police, and emergency service stations that are manned by full time professional service personnel. Calculation of response time shall include the time it takes volunteer emergency personnel to get to the station.

**9.6.3.6. Water.**

(a) Oil and Gas Overlay Zoning District Classification applications shall be analyzed with respect to the availability of adequate potable water, and shall be determined pursuant to the following information obtained from the required Water Availability Assessment to determine:

(1) System capacity;

(2) Capacity of wellfield, or other source of raw water supply;

(3) Historical average flow of potable water;

(4) Historical peak flow of potable water;

(5) Number of hook-ups and the estimated potable water demand per hook up; and

(6) Number of hook-ups for which contractual commitments have been made.

(b) The development order of the County shall provide findings based on substantial evidence that the project is within its service area and that it has the capacity to serve the project as proposed. If the ability of a provider to serve a proposed development is contingent upon planned facility expansion in accordance with a CIP, details regarding such planned improvements shall be submitted.

(c) The determinations in this Section shall be made a part of the Water Availability Assessment.

**9.6.4. CAPITAL IMPROVEMENTS AND SERVICES BUDGET, PLAN AND PROGRAM ("CIP")**

The CIP is the mechanism by which the County shall measure the availability of new public facilities and services and expansion of existing capacity of public facilities and services, the need for which is generated by oil and gas projects. Revenue from oil

and gas projects shall be utilized to supplement capital improvements and services provided by the County and State.

The applicant shall make a cash, certified or bank check, or letter of credit, deposit, to cover all of the County's expenses in reviewing the CIP, engaging consultants, and for a Hearing Officer to conduct the first public hearing on the CIP. The County will provide an estimate of the cost of conducting the study, which shall provide the basis for the initial deposit. The applicant shall make additional deposits if the initial deposit is inadequate to reimburse the County for the costs of the study, and the County shall refund any unexpended funds on deposit after the study is completed.

The CIP shall:

(a) Prioritize the need for public facilities and services subject to this section;

(b) Estimate the cost of improvements for deficiencies or repairs needed to assure availability of public facilities and services for the Oil or Gas Facility;

(c) Analyze the fiscal capability of the County and State to finance and construct improvements;

(d) Establish financial policies to provide for the funding of improvements and services from grants, project exactions and impact fees, development agreements, money in lieu of land, dedications of land, taxes, assessments, rates, and charges; and

(e) Schedule the funding, prioritization, and construction of improvements in a manner necessary to ensure that capital improvements and services are provided when required based on all needs identified in the General Plan and General Plan Oil and Gas Element.

**9.6.4.1. Capital Improvements Data Requirements.**

The CIP shall be based upon:

(a) Public facility and service needs as identified in the General Plan and applicable Area Plan. Where the General Plan Oil and Gas Element does not identify a need for public facilities and services within a given category, public facility and service needs shall be determined on the basis of the Oil and Gas Adequate Public Facility and Traffic Impact Assessments;

(b) The geographic service area and location of major system components for each public facility and service shall be identified; and

(c) Existing revenue sources and funding mechanisms available for capital improvement and public services financing shall be inventoried for each public facility and service.

**9.6.4.2. Capital Improvements Analysis Requirements.**

The CIP shall be based upon the following analyses:

(a) Current county practices that guide the timing, phasing, priority, and location of construction, extension, or increases in capacity of each public facility and service;

(b) The fiscal implications of existing deficiencies and future needs for each type of public facility and service. This analysis shall be based on the needed improvements and services as identified by applying the LOS within each impact area, and shall address the relative priority of need among facility types and shall be derived in part from the Fiscal Impact Assessment.

(c) The costs of needed capital improvements and services for mitigation of existing deficiencies, replacement, and new growth needs;

(d) The basis of cost estimates; and

(e) An assessment of the County is and the Oil and Gas project's ability to finance capital improvements and services based upon anticipated population and revenues, including:

(1) Forecasting of revenues and expenditures for five years;

(2) Projections of debt service obligations for currently outstanding bond issues;

(3) Projection of improvement district ad valorem taxes, charges, rates and assessments;

(4) Projections of other tax bases and other revenue sources, such as development agreement financing, dedications, exactions, impact fees, and service charges;

(5) Projection of operating cost considerations; and

(6) Projection of debt capacity.

**9.6.4.3. Requirements for Capital Improvements and Public Services Implementation.**

The CIP shall contain:

(a) The five-year capital improvement budget of year-by-year capital improvements that the County has accepted to reduce existing deficiencies, to remain abreast of replacements, and to meet future demand;

(b) Project description and general location;

(c) A list of projected costs and revenue sources by type of public facility and public services for the five-year period; and

(d) A five (5) to fifteen (15) year Capital Improvement Plan and Program for public facility and service needs beyond the five (5) year capital improvement budget.

**9.6.4.4. Standards for Exploratory Well Applications.**

An application for an Oil and Gas Overlay Zoning District Classification consisting of only an exploratory well (or wells) is subject to all Over Lay Zone District Requirements including Studies, Reports and Assessments and is exempt only from paying for long-term CIP facilities. Applicants for exploratory wells shall provide all other CIP facilities and costs required by this Ordinance, including but not limited to, access services and all other necessary construction, operation and maintenance of infrastructure. Exploratory wells shall adhere to all SUDP performance standards, including the mitigation of noise and light disturbances. If after exploration, the Applicant seeks to further develop the site, a new application must be submitted with supplemental reports, assessments and studies that analyze and mitigate any development beyond those applicable to the previously approved exploratory well, including an Adequate Public Facilities Assessment, taking into account long-term CIP facilities, operations and maintenance.

No exploratory well may be produced without the application and supplemental reports, assessments and studies described above. An application for an exploratory well allows only exploration, no production of the well.

**SECTION 9.6.5. WATER AVAILABILITY ASSESSMENT.**

**9.6.5.1.** A Water Availability Report required for an application for an Oil and Gas Overlay Zone District Classification shall include:

**9.6.5.1.1.** An evaluation of a 50-year water supply for the oil and gas project;

**9.6.5.1.2.** An assessment of water supplies which addresses whether the total projected water supplies available during normal, single-dry and multiple-dry water years during a 50-year projection will meet the projected water demand associated with the proposed project, in addition to existing and planned use.

**9.6.5.1.3.** The applicant must identify any public water system or water company that may supply water for the project and request an assessment from each. The governing body of the water supplier must approve the assessment at a regular or special meeting. The public water system is to provide the assessment not later than 90 days after receiving a request from the applicant.

**9.6.5.1.4.** If there is no public water system, then the County shall prepare the assessment after consulting with any domestic water supplier whose service area includes the project site and any public water system adjacent to the project site.

**9.6.5.1.5.** The assessment must identify relevant, existing water supply entitlements, water rights, or water service contracts, and describe the quantities of water received in prior years. The identification shall be demonstrated by the applicant providing information related to all of the following:

(a) written contracts or other proof of entitlement to an identified water supply,

(b) copies of a capital outlay program for financing the delivery of a water supply that has been adopted by the public water system,

(c) federal, state, and local permits for construction of necessary infrastructure associated with delivering the water supply,

(d) any necessary regulatory approvals that are required in order to be able to convey or deliver the water supply.

**9.6.5.2.** If no water has been received in prior years under an existing entitlement, right, or contract, the assessment must identify other public water systems, water companies, or water service contract holders that receive a water supply or have existing entitlements, rights, or contracts, to the same source of water.

**9.6.5.3.** Supplies to Remedy Insufficiency: If the public water system's total projected water supplies available during a 50-year projection are insufficient, then the applicant must identify plans to acquire additional supplies that may include, but are not limited to:

**9.6.5.3.1.** The estimated total costs, and the proposed method of financing the costs, associated with acquiring the additional water supplies for the oil or gas facility,

**9.6.5.3.2.** All federal, state, and local permits, approvals, or entitlements that are anticipated to be required in order to acquire and develop the additional water supplies, and

**9.6.5.3.3.** The estimated timeframes within which the public water system or water company expects to be able to acquire additional water supplies.

**9.6.5.4.** If a water supply for a proposed project includes groundwater, the following additional information shall be included in the water supply assessment:

**9.6.5.4.1.** A review of any information contained in a water management plan relevant to the identified water supply for the proposed project,

**9.6.5.4.2.** A description of any groundwater basin or basins from which the proposed project will be supplied,

(a) For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the public water system has the legal right to pump under the order or decree.

(b) For basins that have not been adjudicated, information as to whether the State Engineer has identified the basin or basins as over-drafted or has projected that the basin will become over-drafted if present management conditions continue, in the most current information of the State Engineer that characterizes the condition of the groundwater basin, and a detailed description by the public water system of the efforts being undertaken in the basin or basins to eliminate the long-term overdraft condition.

**9.6.5.5.** A detailed description and analysis of the amount and location of groundwater pumped by the public water system for the past five years from any groundwater basin from which the proposed project will be supplied. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

**9.6.5.6.** A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the public water system, from any basin from which the proposed project will be supplied. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

**9.6.5.7.** An analysis of the sufficiency of the groundwater from the basin or basins from which the proposed project will be supplied to meet the projected water demand associated with the proposed project.

**9.6.5.5.** County's Ability to Override Public Water Agency's Determination: The County shall include an evaluation of the assessment in the EIR and in the Water Availability Report.

**9.6.5.6.** The County shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If the County determines that water supplies will not be sufficient, the County shall include that determination in its findings for the Water Availability Report.

**9.6.5.7.** If the project has been the subject of an assessment that complies with the requirements of this Section, than no additional water supply assessment shall be required for subsequent projects that were part of a larger oil and gas project for which water supplies were found sufficient. Exceptions are:

**9.6.5.7.1.** Changes in the oil and gas project that will substantially increase water demand,

**9.6.5.7.2.** Changes in circumstances that substantially affect the ability to provide a sufficient water supply, and

**9.6.5.7.3.** Significant new information as it becomes known.

**9.6.5.8.** The applicant shall make a cash, certified or bank check, or letter of credit, deposit, to cover all of the County's expenses in reviewing the Water Availability Assessment, engaging consultants, and for a Hearing Officer to conduct the first public hearing on the Water Availability Assessment. The County will provide an estimate of the cost of conducting the study, which shall provide the basis for the initial deposit. The applicant shall make additional deposits if the initial deposit is inadequate to reimburse the County for the costs of the study, and the County shall refund any unexpended funds on deposit after the study is completed.

**SECTION 9.6.6. TRAFFIC IMPACT ASSESSMENT.**

**SECTION 9.6.6.1. GENERAL.**

The intent of this section is to provide the information necessary to allow the Board to assess the transportation effects and impacts of site-generated traffic associated with a proposed oil and gas project. The information in the Traffic Impact Assessment will be coordinated with the Adequate Public Facilities and Services Assessment and the draft EIR.

The isolated and cumulative adverse effects and impacts of the proposed project to the traffic shed need to be understood in relation to the existing and future required capacity of the County and State road system, and to ensure that traffic capacity will be provided at established levels of service so as not to hinder the passage of police, fire and emergency response vehicles, oil tankers to and from the project site, degrade the quality of life, or contribute to hazardous traffic conditions. This section establishes requirements for the analysis and evaluation of adverse transportation effects and impacts associated with proposed oil and gas projects.

The applicant shall make a cash, certified or bank check, or letter of credit, deposit, to cover all of the County's expenses in reviewing the Traffic Impact Assessment, engaging consultants, and for a Hearing Officer to conduct the first public hearing on the Traffic Impact Assessment. The County will provide an estimate of the cost of conducting the study, which shall provide the basis for the initial deposit. The applicant shall make additional deposits if the initial deposit is inadequate to reimburse the County for the costs of the study, and the County shall refund any unexpended funds on deposit after the study is completed.

**SECTION 9.6.6. PURPOSE.**

*Purpose and findings:* The purpose of the traffic impact assessment is to identify the impacts on capacity, adopted level of service (LOS), and safety, which are likely to be created by the proposed oil and gas project. The traffic impact assessment shall identify the improvements needed to:

**9.6.6.2.1.** Ensure safe ingress to and egress from the site;

**9.6.6.2.2.** Maintain adequate road capacity on the County and State road system to accommodate all traffic to and from the site generated by the project;

**9.6.6.2.3.** Ensure safe and reasonable traffic operating conditions on roads and at intersections through which traffic to and from the site passes;

**9.6.6.2.4.** Avoid creation of or mitigate unsafe and hazardous traffic conditions from heavy weights of oil trucks and tankers travelling to and from the site;

**9.6.6.2.5.** Minimize the impact of nonresidential traffic on residential neighborhoods in the County;

**9.6.6.2.6.** Protect the substantial public investment in the existing road system;

**9.6.6.2.7.** Provide a basis for approving, modifying, or denying an application for an Oil and Gas Overlay Zoning District Classification based upon the adequacy or deficiency of the County and State road systems to handle the needs generated by the project; and

**9.6.6.2.8.** Provide a basis for applicant financing of all County and State road improvements as shown on the CIP through use of development agreements and/or Improvement District Assessments for capacity needs.

**9.6.6.2.9.** To evaluate whether adequate traffic capacity exists or will be available at the time a development order is granted for the application for the Oil and Gas Overlay Zone District Classification to safely and conveniently accommodate the traffic generated by the project on the County and State road system;

**9.6.6.2.10** To evaluate traffic operations and impacts at site access points under projected traffic loads;

**9.6.6.2.11.** To evaluate the impact of site-generated traffic on affected intersections in the County;

**9.6.6.2.12.** To evaluate the impact of site-generated traffic on the safety, capacity and quality of traffic flow on public and private roads within the County;

**9.6.6.2.13.** To evaluate the impact of the proposed project on residential roads from the traffic to and from the site;

**9.6.6.2.14.** To ensure that site access and other improvements needed to mitigate the traffic impact of the development utilize County and State accepted engineering design standards and access management criteria;

**9.6.6.2.15.** To establish the monetary contribution that the applicant will be required to provide to the County or to any established area improvement district for the provision of all

roads and highways shown on the CIP, the need for which is generated by the oil and gas facility;

**9.6.6.2.16.** To ensure that the proposed road layout is consistent with the public roadway design standards;

**9.6.6.2.17.** To ensure the proper design and spacing of site access points and identify where limitations on access should be established;

**9.6.6.2.18.** To ensure that potential safety problems on all roads to be used within the County have been properly evaluated and addressed;

**9.6.6.2.19.** To ensure that internal circulation patterns will not interfere with traffic flow on the existing County and State road system;

**SECTION 9.6.6.3. PREPARATION.**

The applicant shall deposit with the application for the Oil and Gas Overlay Zoning District Classification such funds as are necessary for the County to engage a traffic consultant with experience in the preparation of traffic impact assessment.

**SECTION 9.6.6.4. TRAFFIC SERVICE STANDARDS.**

The standards for traffic service that shall be used to evaluate the findings of traffic impact assessment are as follows:

**9.6.6.4.1.** *Capacity:* A volume-to-capacity (V/C) ratio of 0.80 shall not be consistently exceeded on any freeway or expressway as designated on the thoroughfare plan, and a V/C ratio of 0.90 shall not be consistently exceeded on any arterial or collector street as designated on the thoroughfare plan. "Consistently" means that the V/C ratios are exceeded based on average daily peak-hour traffic counts, projections, or estimates.

**9.6.6.4.2.** *Level of service:* For corridors, including mainline, merging areas, and ramp junctions, an LOS C shall be maintained on any highway, freeway, or arterial, and an LOS C on any other designated non local road on the transportation plan. At all intersections, an LOS C shall be maintained on any arterial or higher-order road and an LOS C on any other nonresidential road. Where the existing LOS is below these standards, the traffic impact report shall identify those improvements or transportation demand management techniques needed to maintain the existing LOS, and what additional improvements would be needed to raise the LOS to the standards indicated for the Overlay Zoning District Classification to be approved.

**9.6.6.4.3.** *Number of access points:* The number of access points provided shall be the minimum needed to provide adequate access capacity for the site. Evidence of LOS C operations for individual County and State road movements at access locations is a primary

indication of the need for additional access points. However, the spacing and geometric design of all access points shall be consistent with the access management criteria of the LDC.

**9.6.6.4.4.** *Residential road impact:* Average daily traffic impinging on residential roads shall be within the ranges spelled out in the transportation plan for the class of road involved. No oil and gas project traffic shall increase the traffic on a residential road with at least 300 average daily trips by more than 15 percent, and shall contribute no more than 10 percent of the traffic on any road segment providing residential access.

**9.6.6.4.5.** *Traffic flow and progression:* The location of new traffic signals or proposed changes to cycle lengths or timing patterns of existing signals to meet LOS standards shall not interfere with the goal of achieving adequate traffic progression on major public roads in the County.

**9.6.6.4.6.** *Vehicle storage:* The capacity of storage bays and auxiliary lanes for turning traffic shall be adequate to insure that turning traffic will not interfere with through traffic flows on any public road.

**9.6.6.4.7.** *Internal circulation:* On-site vehicle circulation and parking patterns shall be designed so as not to interfere with the flow of traffic on any public road and shall accommodate all anticipated types of site traffic.

**9.6.6.4.8.** *Safety:* Access points and travel along all County and State roads within the County shall be designed to provide for adequate sight distance and appropriate facilities to accommodate acceleration and deceleration of site traffic. Where traffic from the proposed oil and gas project will impact any location with an incidence of high accident frequency the accident history should be evaluated and a determination made that the proposed site access or additional site traffic will not further aggravate the situation.

**9.6.6.4.9.** *Access Roads:* Shall not exceed 1.08 miles per section of road and shall contain a maximum width of twenty (20) feet paved surface based upon County road construction standards for heavy vehicles. Access roads shall be sited in a manner that mitigates or minimizes their impact on the environment and neighboring land uses.

**9.6.6.4.10.** *Private Roads*: All private roads must meet the same standards as provided for public roads in the Santa Fe County Oil and Gas and Growth Management Elements. Private roads will only be permitted if the Applicant enters into a development agreement for which construction, operation, maintenance standards and financial terms will be provided in the development agreement.

**SECTION 9.6.6.5. CONTENTS.**

A traffic impact assessment shall contain information:

**9.6.6.5.1.** *Site description:* The traffic impact assessment shall contain illustrations and narratives that describe the characteristics of the site and adjacent land uses as well as future oil and gas projects for all transportation to and from the site to the nearest interchange on

procedures; available sources of data; past and related studies; assessment requirements; and other topics relevant to study requirements.

**9.6.6.6.3.** Following initial completion of a traffic impact assessment, it shall be submitted to the Administrator for distribution to the County and State highway staffs involved in the construction and maintenance of public roadways serving the project.

**9.6.6.6.4.** Within 15 working days, County and State staff shall complete initial reviews to determine the completeness of the study and shall provide a written summary to the traffic consultant outlining the need for any supplemental analysis to adequately address the traffic service standards.

**9.6.6.6.5.** Following a determination that the technical analysis is complete, the traffic consultant shall prepare a report outlining recommendations that have been developed to address the findings and conclusions included in the study regarding the proposed development's needs and impacts on the transportation system.

**9.6.6.6.6.** The traffic consultant's recommendations will be presented to the Board as part of the proceedings for approval of the Oil and Gas Overlay District Classification application.

**9.6.6.6.7.** Mitigation based on the conclusions and findings resulting from the traffic impact report or analysis shall be required of the applicant. A development agreement, detailing the applicant's responsibilities and the County's responsibilities for implementing identified mitigation measures, shall be prepared following receipt of the traffic impact report.

**SECTION 9.6.6.7. TRAFFIC IMPACT ASSESSMENT FINDINGS.**

**9.6.6.7.1.** If the traffic consultant finds that the proposed project will not meet applicable service-level standards, the traffic consultant shall recommend one or more of the following actions by the County or the applicant:

(a) Reduce the size, scale, scope, or number of well sites of the development to reduce traffic generation;

(b) Divide the project into phases and authorize only one phase at a time until traffic capacity is adequate for the next phase of development;

(c) Dedicate a right-of-way for street improvements;

(d) Construct new roads;

(e) Expand the capacity of existing roads;

(f) Redesign ingress and egress to the project to reduce traffic conflicts;

(g) Reduce background (existing) traffic;

(h) Eliminate the potential for additional traffic generation from undeveloped oil and gas properties in the vicinity of the proposed development;

(i) Integrate design components to reduce vehicular trip generation;

(j) Implement traffic demand management strategies (e.g., carpool or vanpool programs, flex time, and staggered work hours), to reduce vehicular trip generation; and

(k) Recommend denial or conditional approval of the application for the Oil and Gas Overlay Zoning District Classification.

**SECTION 9.6.7. GEOHYDROLOGIC REPORT.**

**SECTION 9.6.7.1. Geo-hydrologic Report Requirement**

**9.6.7.1.1.** A geo-hydrologic report shall be prepared to assess all geo-hydrologic information pertinent to the oil and gas project area including information from existing geology, hydrology or hydrogeology reports in the region of the oil and gas project area.

The applicant shall make a cash, certified or bank check, or letter of credit, deposit, to cover all of the County's expenses in reviewing the Geohydrologic Report, engaging consultants, and for a Hearing Officer to conduct the first public hearing on the Geohydrologic Report. The County will provide an estimate of the cost of conducting the study, which shall provide the basis for the initial deposit. The applicant shall make additional deposits if the initial deposit is inadequate to reimburse the County for the costs of the study, and the County shall refund any unexpended funds on deposit after the study is completed.

**9.6.7.1.2.** The applicant shall drill sufficient exploratory wells to adequately characterize the aquifer and the vadose zone. A maximum of one (1) well per acre shall be authorized but up to three (3) wells per acre may be authorized if complex geohydrologic conditions so require.

(a) Borehole Geophysics Requirement
   - i. Electric Logs
     - 1. Long and Short Resistivity
     - 2. Spontaneous Potential
   - ii. Neutron Porosity
   - iii. Gamma-Gamma
   - iv. Caliper
   - v. Temperature
   - vi. Fluid Movement (Spinner)

(b) Pump Test Requirements

i. Pump tests should be designed to record drawdown at the well for a sufficient time to determine transmissivity of the aquifer. Duration of the test shall be a minimum of 24 hours.

ii. All tests should monitor the recovery of the water levels in all wells for the amount of time necessary for the water levels to return to the original level.

iii. Standard values for storage or specific yield listed in Exhibit 3 of the Hydrology Appendix to the Santa Fe County Development Code shall be utilized unless sufficient data is presented to justify an alternate storage or specific yield.

(c) Technical Specifications for Well Construction
All such monitoring wells shall be constructed according to specifications provided by the Office of the State Engineer, and shall be properly plugged and abandoned when no longer required according to specifications provided by the Office of the State Engineer.

(d) Preparation of a 20 foot water table or potentiometric surface contour map covering a 2 mile radius from the project site showing depth to water and direction of groundwater flow.

(e) Preparation of Geologic Maps, cross-sections and descriptions of the aquifer and surface water systems including information of recharge areas, springs, boundaries and estimated thickness of saturated units.

**9.6.7.1.3.** Water Quality

(a) The applicant shall provide:

(1) an analysis of all single or multiple units or aquifers within a 2 mile radius of the project site;

(2) an analysis of all contaminant pathways leading from the project site to the aquifers in (a)(1) above, including saturated sandy units within aquifers and unsaturated or vadose zone map;

(3) an unsaturated or vadose zone map; and

(4) an analysis of baseline water quality relating to:

(i) Up gradient Monitoring Wells;
(ii) Down gradient Monitoring Wells; and
(iii) Existing Wells

(5) recommendations for the location and type of groundwater monitoring stations.

**SECTION 9.6.8. EMERGENCY RESPONSE AND PREPAREDNESS PLAN ("ERP Plan").**

An applicant for the Oil and Gas Overlay Zoning District Classification shall provide funds to the County to engage a professional consultant to provide an emergency preparedness and response plan ("ERP Plan"). The ERP Plan shall include a provision for the oil and gas operator to reimburse the appropriate emergency response service providers for costs incurred in connection with an emergency. This plan shall be filed with the County at the time of application for the Oil and Gas Overlay District Classification and shall be updated on an annual basis or as conditions change (e.g. turnover in responsible field personnel, change in substances used). The ERP Plan shall consist of the following information, at a minimum:

The applicant shall make a cash, certified or bank check, or letter of credit, deposit, to cover all of the County's expenses in reviewing the ERP, engaging consultants, and for a Hearing Officer to conduct the first public hearing on the ERP. The County will provide an estimate of the cost of conducting the study, which shall provide the basis for the initial deposit. The applicant shall make additional deposits if the initial deposit is inadequate to reimburse the County for the costs of the study, and the County shall refund any unexpended funds on deposit after the study is completed.

**9.6.8.1.** Name, address and phone number, including a 24 hour emergency number of at least two persons responsible for emergency field operations;

**9.6.8.2.** A printed map, including GPS coordinates, showing the name, location, and description of all potentially dangerous facilities, including, but not limited to, the size and type of all pipelines, wells, and isolation valves. The map shall be prepared digitally on the County geographic information system parcel maps. The as-built facilities map that includes the information regarding the location of isolation valves shall be held confidentially by the County's emergency management officer or other County designee, and shall only be disclosed in the event of an emergency, pursuant to the provisions of the Uniform Trade Secrets Act, NMSA 1978, Sections 57-3A and 57-3A-D;

**9.6.8.3.** A written response plan for the potential emergencies that may be associated with the operation of the facilities. This may include any or all of the following: explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide, methane or other toxic gas emissions, or hazardous material vehicle spills or vehicle accidents;

**9.6.8.4.** A fire prevention, response, and health and safety plan;

**9.6.8.5.** Project-specific emergency preparedness plans are required for any project that involves drilling or penetrating through known or likely zones of hydrogen sulfide or methane gas, as determined by the County. This plan shall be coordinated with and approved by the County's emergency management officer prior to beginning field operations;

**9.6.8.6.** A list, including Material Safety Data Sheets, of all chemicals, additives, and organics used on site to the County. This information will be held in the strictest confidence and shares with other relevant local emergency response personnel only on a "need to know" basis; and

**9.6.8.7.** The Consultant shall advise the Board as to whether the Emergency Response and Preparedness Plan is adequate to protect the public and whether the Board should approve conditionally or deny the Application for the Oil and Gas Overlay Zoning District Classification.

**SECTION 9.6.9 FISCAL IMPACT ASSESSMENT**

**9.6.9.1.** Generally

**9.6.9.1.1.** The fiscal impact assessment involves a study of the fiscal implications of oil and gas drilling in the County and in the Galisteo Basin. Drilling will be permitted only after a determination of the adequacy and financial provision for roads, highways, surface water runoff and detention facilities, emergency response service, fire and police substations and operational costs for additional police, fire and emergency response service full time employees and technicians have been met. This includes the County public works costs to maintain roads, drainage areas, environmentally sensitive areas and historic, cultural and archeological artifacts and sites.

**9.6.9.1.2.** The fiscal impact assessment shall project urban levels of police, fire and emergency response service to affected areas of the County and Galisteo Basin. The assessment shall estimate the threshold minimum number of full time paid public service workers necessary to provide fire, police, emergency response service, road, drainage, environmentally sensitive areas and historic, cultural and archaeological artifacts and site necessary for maintenance and operation of the facilities and services.

**9.6.9.1.3.** The assessment estimates the public service costs for new workers and worker families brought into an oil and gas project area for the exploration and drilling period and beyond.

**9.6.9.1.4.** The applicant shall make a cash, certified or bank check, or letter of credit, deposit, to cover all of the County's expenses in reviewing the Fiscal Impact Assessment, engaging consultants, and for a Hearing Officer to conduct the first public hearing on the Fiscal Impact Assessment. The County will provide an estimate of the cost of conducting the study, which shall provide the basis for the initial deposit. The applicant shall make additional deposits if the initial deposit is inadequate to reimburse the County for the costs of the study, and the County shall refund any unexpended funds on deposit after the study is completed.

**9.6.9.2.** Determination of Costs and Revenues

**9.6.9.2.1.** The fiscal and economic effects of oil and gas drilling shall be determined using nationally accepted and longstanding fiscal and economic models. The fiscal and economic models shall project what shall be needed in terms of public operating and maintenance services

and provision of capital facilities and determine what funds will be available to pay for these facilities and services.

**9.6.9.2.2.** Costs shall be determined using current budgets, both operating and capital interviews with service providers to determine areas of deficient capacity and service where additional expenditures will be necessary.

**9.6.9.2.3.** Revenues shall be determined using budgets and formulas for calculating additional taxes, infrastructure and service fees, licenses, administrative fees, grants and improvement district assessments.

**9.6.9.2.4.** The fiscal impact assessment shall determine whether, and to the extent, an oil and gas project is fiscally and economically positive, as to whether forthcoming revenues (operating and capital) exceed the forthcoming costs (operating and capital) of the oil and gas project.

**SECTION 9.6.10. COMPLETENESS DETERMINATION.**

**9.6.10.1.** Within sixty (60) days after receiving an application for an Oil and Gas Overlay Zoning District Classification, the County shall mail or provide in person a written determination to the applicant, stating either that the application is complete, or that the application is incomplete.

**9.6.10.2.** If the County determines that the application is incomplete, it shall identify in its determination the parts of the application which are incomplete, and shall indicate the manner in which they can be made complete, including a list and specific description of the additional information needed to complete the application. The applicant shall then submit this additional information to the County within thirty (30) days of the determination, unless the County agrees in writing to a longer period.

**9.6.10.3.** The County shall determine in writing that an application is complete within thirty (30) days after receipt of the additional information indicated in the list and description provided to the applicant under section 9.6.10.2.

**9.6.10.4.** An application for an Oil and Gas Overlay Zoning District Classification is deemed complete under this Section if the County does not provide a written determination to the applicant that the application is incomplete within sixty (60) days of the receipt of an application under paragraph (a) or within thirty (30) days of the receipt of any additional information submitted under section 9.6.10.2.

**9.6.10.5.** An Oil and Gas Overlay Zoning District Classification application is complete for purposes of this Section when it meets the completeness requirements of, or is deemed complete under, this Section.

**9.6.10.6.** After an overlay application is complete or deemed complete, the County may request additional information or studies if new information is required or a substantial change in the

proposed development occurs. It shall make a completeness determination as required by this section for any additional information or studies submitted.

**SECTION 9.6.11. DEVELOPMENT AGREEMENTS.**

**9.6.11.1.** The County shall enter into and adopt development agreements concerning the development of an Oil or Gas Facility or Facilities or Projects with the owners and lessees of subsurface mineral estates and/or oil and gas lessees and such Development Agreement may be entered into with other governmental units with jurisdiction, pursuant to this Section.

**9.6.11.2.** The purpose of this Section is to:

(a) provide a mechanism for the County and owners of mineral estates and oil and gas and lessees to form agreements, binding on all parties, regarding vesting, development, financing and land use of the oil and gas project;

(b) promote land development regulation by allowing the County to adopt development agreements that include terms, conditions, and other provisions that may not otherwise be able to be mitigated or implemented without the use of a development agreement;

(c) promote stability and certainty in oil and gas project regulation by providing for the vesting of rights in the project and for the mutual enforceability of development agreements by all parties;

(d) provide a procedure for the adoption of such agreements that ensures the participation and comment of the public and elected officials;

(e) provide a partial mechanism for the financing of all capital facilities and public services as provided for in this Ordinance; and

(f) provide a mechanism for assuring that the operation and maintenance costs of all facilities required by the County's development approvals are proportionally assessed to each applicant on an annual basis.

**9.6.11.3.** A development agreement shall be entered into and adopted only pursuant to this Section and shall have the force and effect of a land development regulation.

(a) Except as provided expressly to the contrary in a development agreement, development and use of the oil and gas property that is the subject of a development agreement shall occur according to the terms, conditions, and other provisions of the agreement, notwithstanding inconsistent land development code regulations and amendments.

(b) Where the development agreement does not include any term, condition, or other provision concerning a matter that is regulated by one or more land development code regulations as amended, then those land development code regulations shall apply.

(c) A development agreement will not take effect until it is recorded, by either of the parties to the development agreement, with the County Clerk within thirty (30) days after its adoption.

**9.6.11.4.** A development agreement shall:

(a) be consistent with the County General Plan including the Oil and Gas Element, and any applicable Area Plan, including but not limited to a Galisteo Basin Area Plan;

(b) be adopted by an ordinance of the Board after notice and hearing as required for the adoption of land development code regulations;

(c) be enforceable by the County and other governmental units that are party to the development agreement in the same manner as a land development code regulation;

(d) be enforceable by the owners of subsurface mineral estates and oil and gas lessees who are party to the development agreement and their successors in interest by civil action against the local government or other parties as may be necessary, except that if an enforcement action upon the development agreement by the County has previously been commenced and is still pending, any and all enforcement or disputes shall be determined in the enforcement action;

(e) be in writing and include the following terms:

(1) the names of all parties to the development agreement;

(2) a description of the oil and gas project which is the subject of the development agreement;

(3) a statement detailing how the development agreement is consistent with the General Plan and any applicable Area Plan, including but not limited to the Galisteo Basin Area Plan;

(4) the effective date of the development agreement;

(5) the duration of the development agreement, which shall not exceed ten (10) years except where the development agreement authorizes phased development, the duration of the agreement shall not exceed fifteen (15) years;

(6) a reiteration in full of the provisions of section 9.6.11.5.;

(7) a reiteration in full of the provisions of section 9.6.11.4(d) and (e) above, and any other agreed terms concerning enforcement, including any agreement to submit disputes to arbitration or mediation before resorting to commencement of an enforcement action or civil action;

**9.6.11.5.** A development agreement may be cancelled at any time:

(a) by the mutual written consent of all parties thereto, with the consent of the Board by ordinance after a public hearing; or

(b) by the County if it finds in writing, after a public hearing with proper notice, that a hazard, unknown to the County at the time the development agreement was adopted, exists on or near the property of the oil and gas project that is the subject of the development agreement that would endanger the public health or safety if development were to commence or proceed pursuant to the development agreement.

(c) A development agreement, upon consent of all parties, may contain a mediation or arbitration procedure by which disputes concerning the development agreement may be decided. The decisions reached under such procedure shall be considered land-use decisions.

**SECTION 9.7. TRANSFER OF DEVELOPMENT RIGHTS ("TDRs").**

**9.7.1.** The County herein adopts these provisions for the transfer of development rights, in the manner prescribed in this Section.

**9.7.2.** The purposes of this Section are to:

**9.7.2.1.** Authorize the owner of oil and gas mineral estates or oil and gas leasehold estates that requires relief pursuant to a beneficial use and value determination, to transfer one or more rights to develop oil or gas drill sites from a sending parcel to a receiving parcel for the following purposes:

(a) to conserve agriculture, ranch, and forestry uses of land;

(b) to protect lands and structures of cultural, architectural, and historic significance;

(c) to ensure that the owners of land that is so preserved, conserved, or protected may make reasonable use of their property rights by transferring their right to develop to other mineral estate owners, or oil and gas lessees that can make use of it;

(d) to provide a mechanism whereby drill site development rights may be reliably transferred;

(e) to ensure that development rights are transferred from both the owner of a mineral estate and oil and gas lessee to oil and gas mineral estates and leases that have received development approvals for an Oil and Gas Overlay Zoning District Classification and a Special Use and Development Permit;

(f) to authorize the County to create a TDR Bank, whereby oil and gas development rights may be purchased and conveyed by the County, in order to stabilize the

market in development rights and to regulate or control the development property that the County intends to protect under subparagraphs (a) through (d) above;

(g) to authorize donations of development rights to the County or the TDR Bank.

**9.7.2.2.** The Board may approve a transfer of development rights by ordinance, and an ordinance pursuant to this Section shall be consistent with:

(a) the General Plan and the General Plan Growth Management and Oil and Gas Elements; and

(b) an Area Plan, including but not limited to a Galisteo Basin Area Plan

**9.7.2.3.** The Ordinance shall:

(a) be adopted after a public hearing has been held on the proposed ordinance, with the same as required in Section 9.8 for the application for the Overlay Zoning District Classification;

(b) describe in detail both the sending and receiving properties;

(c) describe the development rights to be transferred in specific detail, quantifying the number of oil and gas drill sites permitted to be transferred and the number of oil and gas drill sites permitted to be located pursuant to subsection 9.4.1.1, with the location of such oil and gas drill sites on the receiving property which shall be described in detail;

(d) require that the mineral owner and/or the lessee of a sending parcel execute, and record with the County Clerk, a deed or instrument relinquishing the released development rights; and

(e) require that, once a transfer of development rights is approved, the County shall issue to the owner and/or lessee of the receiving parcel, and record with the County Clerk, a certificate assigning to the receiving parcel, and all present and future heirs, successors and assigns, the development rights that the receiving parcel is entitled to through the transfer of development rights. Such certificate shall describe the development rights, refer to the deed transferring the development rights, and the certificate shall have a copy of the deed attached.

**9.7.2.4.** No property shall be designated as a receiving property unless the Board has granted to such property a development order and a Special Use and Development Permit approving an Oil and Gas Overlay Zoning District Classification.

**9.7.2.5.** The County shall notify the County Assessor of the transfer of development rights within thirty (30) days of:

**9.7.2.5.1.** he adoption of a TDR Ordinance above;

**9.7.2.5.2.** the issuance of a certificate for the TDRs;

**9.7.2.5.3.** purchase of development rights by the County for its TDR Bank;

**9.7.2.5.4.** the receipt by the County or the TDR Bank of a donation of development rights;

**9.7.2.5.5.** the sale or conveyance of development rights by the TDR Bank; and the Assessor shall adjust the valuations for purposes of the real property tax of the sending parcel and of the receiving parcel or parcels, if any, appropriately for the development rights extinguished or received.

**9.7.2.6.** The County may, by separate ordinance, establish a transfer of development rights bank, otherwise referred to as a "TDR Bank." The TDR Bank shall be operated by the County Manager

**9.7.2.6.1.** The TDR Bank shall have the power to purchase development rights, subject to the approval of the Board;

**9.7.2.6.2.** The TDR Bank shall have the power to sell or convey any development rights it may possess, subject to approval of the Board;

**9.7.2.6.3.** The TDR Bank may, for conservation or other purposes, hold indefinitely any development rights it possesses; and

**9.7.2.6.4.** The TDR Bank may receive donations of development rights from any person or organization, public or private, subject to the approval of the Board.

**9.7.2.6.5.** The TDR Bank may be funded from:

(a) the general fund of the County;

(b) the proceeds of the sale of development rights by the TDR Bank; or

(c) grants or donations from any source.

**9.7.2.6.6.** A separate interest bearing trust fund shall be established for the TDR Bank, supervised by the County Manager, into which fund all receipts shall be deposited and from which payments shall be made.

**SECTION 9.8. NOTICE OF PENDENCY OF APPLICATION.**

**9.8.1.** In the application, the Applicant shall provide all information required for the service of notice to all interested persons as set forth below and shall pay to the County all administrative costs required for service of notice to interested parties. In addition to any notice requirements set forth in the Santa Fe Land Development Code (1996) (as amended), a written notice of the pendency of an Application for an Oil and Gas Overlay Zoning District classification shall be

provided by the County to each surface owner, royalty owner, overriding interest owner, unit operator, working interest owner, or severed mineral owner whose property interest abuts a private easement to be used to access the Oil or Gas Facility. The County shall provide proof of such notice by maintaining a copy of the letter providing such notice, a list of the individuals notified, and certified mail receipts. The notice shall be mailed no later than five (5) working days following submission of the Application. For purposes of notice for a proposed well or drill site on which multiple wells will be sited, surface owner, royalty owner, overriding interest owner, unit operator, working interest owner, or severed mineral owner shall receive notice if the property boundary of the surface owner is within three miles of the proposed drill site or well.

**9.8.2.** In addition to any notice requirements set forth in the Code, the notice of the pending Application shall also contain the following:

(a) A description of the boundaries of the proposed Oil and Gas Overlay Zoning District classification, including a legal description and a street address, if available. The notice must identify the operator and any designated agent for the application; the current business address and telephone number for the operator and its agent, if one has been designated; and a brief description of the facilities and equipment proposed to be located at the site when operational; and

(b) A statement that additional information concerning the application may be obtained from the administrator.

**9.8.3.** A notice shall be posted by the County in a conspicuous and visible location within the proposed Oil and Gas Overlay Zoning District Classification site, which shall contain the information required in subsections 9.8.1 and 9.8.2 above.

**9.8.4.** After a public hearing is set, a notice of the time, place and street address of the public hearing, together with a description of the location of the proposed Oil and Gas Overlay Zoning District classification and a detailed summary of the application, shall be published by the County in a newspaper of general circulation in the County at least twenty-one (21) days prior to the date of the public hearing. An affidavit of publication shall be obtained from the newspaper and provided to the administrator.

**9.8.5.** The County shall also provide notice to any other person, agency or organization that has filed a request with the administrator to receive notice of an application for an Oil and Gas Overlay Zoning District classification.

**9.8.6.** The County shall provide notice in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish.

**SECTION 9.9. APPLICATION FEE**

**9.9.1** Each application for approval of an Oil and Gas Overlay Zoning District Classification shall be accompanied by a nonrefundable application fee in the amount set forth in Appendix A. The application fee shall be paid by cashier's check, wire transfer or certified funds.

**9.9.2** At the time of certification of the completeness of the Oil and Gas Overlay Zoning District Classification Application, the applicant shall deposit with the Administrator either by certified bank check or letter of credit from a New Mexico banking institution a further sum as calculated by the Administrator for the consultant fees and expenses for the required assessments, reports and studies; hearing officer fees and expenses; and County expenses for preparation of a development agreement, reproduction costs, mailing and posting of notices and newspaper notice costs. This deposit shall be required prior to any further processing of the application. The deposit shall be adjusted from time to time for actual additional costs and fees incurred by the County, consultants and the hearing officer. Any deposit made in excess of costs and fees incurred at the time of the Board's final development order on the application shall be refunded or credited to the applicant within thirty (30) days from the Board's development order.

**SECTION 9.10. REFERRALS**

**9.10.1.** The administrator shall refer an Application for approval of an Oil and Gas Overlay Zoning District Classification to other government agencies, cities, or entities having a statutory interest in the matter, or otherwise affected by the Application, for review and comment, including but not limited to, specifically, the New Mexico Oil Conservation Division, the New Mexico Taxation and Revenue Department, the New Mexico Environment Department, the New Mexico State Engineer, and the New Mexico State Land Office and the City of Santa Fe.

**9.10.2.** The Administrator may, in its discretion and at the expense of the Applicant, hire experts to review the Application and submittals or to evaluate specific technical issues, or require the Applicant to retain experts to provide analysis and studies of relevant issues to support the Application.

**9.10.3.** When an Application is scheduled for public hearing, the Administrator shall provide any comments received by other government agencies at the public hearing held on the Application.

**SECTION 9.11. PUBLIC HEARING**

The CDRC and the Board of County Commissioners shall set public hearings for the Application after the Administrator's determination that the Application is complete.

**SECTION 9.12. REVIEW CRITERIA**

Each Application for approval of an Oil and Gas Overlay Zone shall be reviewed by the CDRC and the Board of County Commissioners:

(a) for consistency with the General Plan including the adopted Oil and Gas Element, and any applicable Area Plan including, but not limited to, a Galisteo Area Plan;

(b) to ensure that any environmental effects and impacts identified in the environmental impact report are appropriately mitigated;

(c) that adequate public facilities either exist or can be promptly funded as identified in the adequate public facilities assessment;

(d) that improvements identified in the adequate public facilities assessment can be provided as set forth in the capital improvement plan and when such facilities will be available;

(e) that water is available for the various phases of the oil and natural gas facility as set forth in the water availability assessment;

(f) that the impacts of traffic generated as a result of activities taking place in the proposed oil and gas overlay district can be mitigated;

(g) to determine whether the proposed location is compatible with adjoining uses given the size, design and operational characteristics of the proposed Oil or Gas Facility or Facilities, and whether the Facility or Facilities can be made compatible with the surrounding area by using reasonable efforts to mitigate any public nuisance or land use effects or impacts of operation of the Oil or Gas Facility or Facilities. Factors to be considered include impacts on property values, public safety, impacts on cultural, historical and archeological resources, emergency service response, wildlife and vegetation resources, noise, impacts on roads and highways, vibration, odor, glare, fire protection, access, visual impacts, and impacts upon air and water quality and quantity, the past performance of the Operator's past compliance (or lack thereof) with federal, state and local laws pertaining to oil and gas exploration and production activities; and

(h) to determine whether the proposed Facility or Facilities will be detrimental to the safety, health, prosperity, order, comfort and convenience of the County pursuant to NMSA 1978, § 4-37-1.

**SECTION 9.13. CDRC RECOMMENDATION.**

The CDRC shall provide a recommendation to the Board of County Commissioners on the application for approval of an Oil and Gas Overlay Zone within 90 days of the Administrator's certification that the Application is complete. The CDRC shall issue a written order containing its recommendations.

**SECTION 9.14. DECISION OF THE BOARD OF COUNTY COMMISSIONERS.**

The Board of County Commissioners shall render a decision on the application for approval of an Oil and Gas Overlay Zone within 90 days of receipt of the recommendation of the CDRC. The Board of County Commissioners may approve, conditionally approve, or deny the Application and shall issue a written order with findings of fact and conclusions of law.

**SECTION 9.15. CONFLICTS OF INTEREST.**

**9.15.1.** All applications for development approval for oil or gas facilities are subject to quasi-judicial procedural due process standards. No Board, CDRC, or Hearing Officer shall be involved in the processing of any such application where such person has (1) a conflict of interest; (2) received any ex parte communication from any person regarding the application; or (3) has made any unauthorized site visit without approval of the Board, CDRC, or County Attorney.

9.15.2. In the enforcement of any development approval, an Oil and Gas Inspector shall remove himself/herself in the event of a conflict of interest.

## SECTION 10. STATE APPLICATION FOR PERMIT TO DRILL.

After approval by the Board of an Oil and Gas Overlay Zoning District Classification, the applicant must receive approval of Applications for Permit to Drill ("APD") and an Exploration and Development Plan from the OCD or its successor State agency prior to submitting an application to the County for a Special Use and Development Permit.

## SECTION 11. OIL AND GAS SPECIAL USE AND DEVELOPMENT PERMIT PROVISIONS.

**11.1** Compliance With Ordinance Required

No person shall commence construction or operate any Oil or Gas Facility without first receiving a Special Use and Development Permit ("SUDP") issued by the CDRC together with subsequent Grading and Building Permits and a Certificate of Completion as provided for in this Section. A separate SUDP shall be required for each separate Oil or Gas Facility.

**11.2.** Effect of Permit

**11.2.1** When an SUDP has been issued for an Oil and Gas Facility or Facilities ("Facility"), such permit together with subsequent Grading and Building Permits as required and a Certificate of Completion shall constitute sufficient authority for commencement of drilling, operation, production, workover, maintenance, repair and testing and all other usual and customary activities associated with the exploration, development, operation and production of oil and gas.

**11.2.2** An SUDP issued pursuant to this Ordinance shall expire or be revoked after a duly noticed public hearing held by the Board, if construction of the Oil and Gas Facility is not completed within two (2) years of the date of development approval of the SUDP (and the completion of administrative and judicial appeals), with the following exceptions: (i) a multiyear phased project that is approved by the development order approving the SUDP; (ii) an Oil and Gas Facility that is substantially completed.

**11.2.3** Any development order granting, granting with conditions or denying an SUDP or an amendment to the SUDP shall be appealable to the Board by the applicant, any interested party or by the Administrator within thirty (30) days after issuance of the development order, by the CDRC.

**11.3** Amendments, Supplemental Permits

**11.3.1** An amendment to the SUDP shall be required prior to undertaking any substantial modification to the Oil and Gas Facility including, but not limited to, recompletion of a well or substantially altering equipment at the facility, a change in well configuration or type of product being produced (e.g. oil or gas), or a substantially altering the site layout, or any material change from conditions presented by the Applicant during the initial permitting process (including but

not limited to a substantial increase in traffic or water use or consumption from that authorized or predicted in the assessments submitted for the Overlay Zoning, use of different materials or processes than those disclosed during permitting, substantial change in type of operations. Any change in the location of wells shall require a reapplication for amendments to both the Overlay Zoning and SUPD development orders.

**11.3.2** Any operation that deviates from the SUDP order that the Operator determines in good faith is extremely necessary to preserve the public health, safety or welfare or to prevent property damage or pollution may be done on an immediate basis without prior notice or approval by the County. The Applicant shall provide the Administrator with notification of such emergency modifications within six (6) hours after determining the need for emergency modifications, and thereafter by filing a request for a written amendment to the SUPD development order, specifying the modifications made, within two (2) working days of completion.

**11.3.3** Once a well has either been completed as a producer or abandoned as a dry hole, an amendment to the SUPD is required to recomplete the well. The application for the SUDP amendment shall specify:

a. The condition of the well and the casing therein;

b. The depth to which it is proposed such well be deepened or the new intervals to be perforated;

c. The proposed casing program to be used in connection with proposed deepening operations; and

d. Evidence of adequate current tests showing that the casing strings in the well passed such tests.

**11.3.4** In the event the CDRC is satisfied that the well may be reworked with the same degree of safety as existed in the original well, an amendment to the SUDP may be issued authorizing the operation. In any reworking operation, the Operator shall comply with all other provisions contained in this Ordinance.

**11.4** Annual Operating Fee

11.4.1 A non-refundable annual inspection fee is hereby levied upon each Oil and Gas Facility operated or maintained within the County. The amount of such fee is set forth in Appendix A. The fee shall be paid by cashier's check, wire transfer or certified funds. The fee shall be payable to the County on or before the annual anniversary date of the issuance of the SUDP. Failure to pay the fee within thirty (30) days after the annual fee is due shall lead to a public hearing with due notice to revoke the Overlay Zoning and SUDP orders. A late fee of an additional five hundred ($500.00) dollars per facility per month shall be imposed.

11.4.2 Revenue from fees collected pursuant to this Ordinance shall be placed in a special fund the revenue from which shall be used to retain and pay the Oil and Gas Inspector, other County staff, or professional consultants and to administer and enforce this Ordinance. Revenue

in excess of that required to retain and pay the above expenses may be used for County general fund purposes.

**11.5** Annual Reporting

11.5.1 Each Oil and Gas Facility shall provide on an annual basis the following information to the Administrator:

A. A current list of personnel who may be contacted in case of an emergency at the Oil and Gas Facility. This list shall contain all information required to be set forth in this Ordinance, information requested by the Administrator, and information including, but not limited, to the following:

i. the name(s) of such person or persons;

ii. the job description(s) of such person or persons; and

iii. the residence, office and mobile telephone numbers of such person or persons.

B. A list of all Oil and Gas Facilities owned or operated within the County by that Operator in the same ownership. This list shall include all wells except those that have been plugged and abandoned in compliance with law. The list shall contain all information requested by the Administrator, including but not limited to the following:

i. the lease name and well number of each well;

ii. the legal description of each well;

iii. the current status and use of each well; and

iv. the current status and use of each Oil and Gas Facility.

**11.6** Change Of Operator

11.6.1. If a new Operator is proposed to be designated for an Oil and Gas Facility, an amendment to the SUDP shall be required.

11.6.2. The new Operator must provide copies of the approved Change of Operator, Form C-145, from the OCD in addition to all submittals required for an application for a SUDP specified herein.

11.6.3. The obligations stated in this Ordinance on the previous Operator shall not be released (including required financial security and insurance) until the new SUDP is obtained by the new Operator.

**11.7** Oil and Gas Inspector

11.7.1. The position of Oil and Gas Inspector is established. The Oil and Gas Inspector shall serve under and at the direction of the Administrator. It shall be the duty of the Administrator and the Oil and Gas Inspector to monitor compliance with and enforce the provisions of this Ordinance. It shall also be the duty of the Oil and Gas Inspector to monitor compliance within the development order granting the SUDP. The Oil and Gas Inspector shall assist the Administrator and the CDRC with the technical review of applications.

11.7.2. The Oil and Gas Inspector shall be a person who, by virtue of education, training or experience is qualified to monitor compliance with and enforce the provisions of any SUDP issued pursuant to this Section. The Oil and Gas Inspector may be a person employed by the County as a Code Enforcement Officer or a person contracted to perform the duties.

**11.8** Special Use Permit and Development Application and Review Process

11.8.1. No SUDP for the operation of an Oil or Gas Facility shall be issued for property within the County, unless that property has received a development order approving an Oil and Gas Overlay Zoning District Classification for the project as approved by the Board pursuant to Section 9 of the Ordinance.

11.8.2. If a property has received development approval for an Overlay Zone, no Oil or Gas Facility shall be constructed unless an SUDP for such Facility has been issued by the CDRC after a public hearing. Issuance of an SUDP is required before any person may locate a new Oil or Gas Facility or Facilities, to substantially change, expand, or modify an existing Oil or Gas Facility or Facilities, or re-enter a well that has been plugged and abandoned as shown in the records of the OCD.

11.8.3 An Oil or Gas Facility shall not be permitted within a site listed on the National Register for Historic Places, a site designated in the Galisteo Basin Archaeological Sites Protection Act (as amended), 108 Pub. L. No. 208, 118 Stat. 558 (2004), the Cerrillos Hills Historical Park, or the Ortiz Mountains Educational Preserve. Nothing in this paragraph shall prevent accessing oil and gas that lies beneath these areas through directional drilling or other advanced technologies, consistent with the other provisions of this Ordinance, so long as no Oil and Gas Facilities occupy the surface.

11.8.4 Applicants shall submit a single SUDP application for each Oil or Gas Facility located within the same physical surface location. Where a facility or facilities are not utilizing the same physical surface location, a separate SUDP application must be filed for each such individual facility.

11.8.5. An application for an SUDP is required and shall be in writing and signed by a person duly authorized to sign on behalf of the Owner of the mineral estate or the oil and gas lessee. The application shall be filed with the Administrator along with the required submittals set forth in this Ordinance, and the required application fee set forth in Appendix A of this Ordinance. A separate application shall be required for each well and for each Oil and Gas Facility. Applications may be consolidated and processed simultaneously, but each Oil and Gas Facility shall be considered separately.

11.8.6 An Application for an SUDP shall include the following:

11.8.6.1 The development order of the Board approving the "Oil and Gas Overlay Zoning District classification" establishing where the facility or facilities are to be located; and all documents, reports, plans, assessment reports and development orders in relation to the Overlay Zone proceedings.

11.8.6.2 Copies of all relevant OCD documents filed in conjunction with the facility or facilities, including, but not limited to the application for a permit to drill (C-101) and the drilling plat (C-102);

11.8.6.3 The completed Final Environmental Impact Report, Fiscal Impact Assessment, Water Availability Report, Traffic Impact Assessment, Geo-Hydrological Report, Emergency Services Response and Preparedness Plan and Adequate Public Facilities and Services Assessment that served as the basis for the Board's development order on the Oil and Gas Overlay Zone application.

11.8.6.4 A detailed development plan map with north arrow and appropriate scale for the parcel where the Oil or Gas Facility or Facilities and wells will be sited that shows: the location of the components of the proposed facility or facilities, including, but not limited to, wells, tanks, pipelines, compressors, separators, lights, storage sheds, tank batteries, impoundment facilities, and staging and storage areas; existing improvements; utility easements and rights-of-way, if any; site features, including floodways, streams, floodplains, waterbodies, drainage patterns, aquatic habitat, vegetative and wildlife habitat, historical, cultural and archaeological sites; existing and proposed topography as necessary to portray the direction and slope of the area affected by the Oil or Gas Facility or Facilities; boundaries of the lease; and compliance with all setback requirements set forth in the Board's development order on the Overlay Zone application.

11.8.6.5 Adequate evidence of satisfaction of the financial assurance and comprehensive general liability insurance requirements.

11.8.6.6 A detailed reclamation plan, including a re-vegetation plan, that will return the area disturbed by the Oil or Gas Facility or Facilities to its natural condition. The plan must include a provision requiring monitoring on at least an annual basis for a period of ten (10) years. The reclamation plan shall be consistent with requirements imposed by the OCD.

11.8.6.7 If a Change of Operator is desired, a description of the new Operator's organizational structure, including a description of any wholly owned subsidiaries or parent companies and the relationship of the Operator to those subsidiary or parent companies in the same ownership.

11.8.6.8 If a Change of Operator is desired, a complete list of Oil and Gas Facilities owned or operated in the State of New Mexico, including facilities owned or operated by a parent or subsidiary identified in the previous paragraph; and a list of all oil and gas facilities in which the applicant has had a permit suspended or revoked or paid an administrative fine for violations of law.



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11.8.6.9. If a Change of Operator is requested and, approved by the CDRC as an Amendment to the SUDP, a letter of indemnity from a parent or subsidiary corporation with the County identified as a third-party beneficiary shall be provided.

11.8.6.10 If a Change of Operator is requested as an Amendment to the SUDP, a list of Oil and Gas Facilities owned or operated by the Applicant that are not in compliance with regulatory approvals in the relevant jurisdiction. For each such facility listed, provide details concerning the compliance issues experienced;

11.8.6.11 If a new well or a workover of an existing well is proposed, a drilling or workover plan shall be submitted, including the amount, weight and size of conductor pipe, surface pipe and production pipe, and the procedures proposed for cementing each;

11.8.6.12 If plugging and abandonment is proposed, a plugging and abandonment plan shall be submitted that details the proposed operations and is otherwise consistent with requirements imposed by the OCD;

11.8.6.13 The name and address of the person upon whom service of process or legal notice may be made on the Applicant within this State; and

11.8.6.14 A nonresident Applicant shall provide copies of documents establishing the Applicant's right to do business in the State of New Mexico from the Public Regulation Commission and shall designate a person within the State authorized to receive all notices and service of process;

11.8.6.15 Where the Application is one for the re-entry of an abandoned well, said application shall contain all the information required by this Section, and shall also provide all of the following information:

(a) a statement of:

i. the condition of the abandoned well at the time the application is filed;

ii. the depth to which it is proposed such well shall be deepened; and

iii. the casing program to be used in connection with the proposed deepening.

(b) a statement of the tests which will be run on the casing strings to show that the casing strings meet the same requirements for an original well. Include any proposed remedial cementing.

**11.9** Notice

The same Notice shall be provided by the Applicant required for the Application for the Oil and Gas Overlay Zoning District Classification, as specified in Section 9.8 of the Ordinance.

**11.10** Application Fee

Each Application for approval of an SUDP shall be accompanied by a nonrefundable application fee in the amount set forth in Appendix A. The application fee shall be paid by cashier's check, wire transfer or certified funds.

**11.11** Referrals

11.11.1 The Administrator shall refer an Application for approval of an SUDP to other government agencies, cities, or entities having a statutory interest in the matter, or otherwise affected by the Application, for review and comment, including but not limited to, specifically, the New Mexico Oil Conservation Division, the New Mexico Taxation and Revenue Department, the New Mexico Environment Department, the New Mexico State Engineer, and the New Mexico State Land Office and the City of Santa Fe.

11.11.2 The County may, in its discretion and at the expense of the Applicant, hire experts to review the Application and submittals or to evaluate specific technical issues, or require the Applicant to retain experts to provide analysis and studies of relevant issues to support the Application.

11.11.3 When an Application is scheduled for public hearing, the Administrator shall provide any comments received by other government agencies at the public hearing held on the Application.

**11.12** Completeness

The Administrator shall notify the Applicant concerning the completeness of the Application within thirty (30) days of receipt. No Application shall be processed by the CDRC until it has been deemed to be complete by the Administrator.

**11.13** Hearing

The CDRC shall set a public hearing for the Application after the Administrator's determination that the Application is complete.

**11.14** Review Criteria

Each Application for approval of an SUDP shall be reviewed by the CDRC

11.14.1 for consistency with the General Plan Oil and Gas Element, any applicable Area Plan including but not limited to a Galisteo Area Plan, and with the development order issued by the Board on the Overlay Zone Application.

11.14.2 to determine whether the proposed Oil or Gas Facility or Facilities meet or exceed the performance standards as set forth in Section 11.17-18;

11.14.3 to determine whether the proposed location is compatible with adjoining uses given the size, design and operational characteristics of the proposed Oil or Gas Facility or

Facilities, and whether the Facility or Facilities can be made compatible with the surrounding area by using reasonable efforts to mitigate the possible adverse consequences of operation of the Oil or Gas Facility or Facilities. Factors to be considered include impacts on property values, public safety, impacts on cultural, historical and archeological resources, emergency service response, wildlife and vegetation resources, noise, impacts on roads and highways, vibration, odor, glare, fire protection, access, visual impacts, and impacts upon air and water quality and quantity, the past performance of the Operator's past compliance (or lack thereof) with federal, state and local laws pertaining to oil and gas exploration and production activities

11.14.4 to determine whether the proposed Facility or Facilities will be detrimental to the safety, health, prosperity, order, comfort and convenience of the County pursuant to NMSA 1978, § 4-37-1.

11.14.5 to the extent consistent with the other Review Criteria, to locate the Facility or Facilities within the area determined by the OCD for such Facility or Facilities.

11.14.6 to determine if the proposed location is in a geologic hazard area or an area with slopes equal to or exceeding eleven (11 %) percent.

11.14.7 to determine whether the requirements for co-location and directional drilling have been met, and to determine whether the surface area occupied by the project is less than or equal to acreages permitted under this Ordinance.

11.14.8 to determine whether the Operator has violated any federal, state, and local laws regulating or pertaining to oil and gas exploration and production either in the United States or elsewhere. Relevant considerations include whether the Operator has experienced spills or leaks, water contamination (whether surface or subsurface), other environmental problems; the Operator or Owner's prior reclamation activities; whether the Operator has damaged fauna, flora, historical, cultural or archaeological resources, streams, wetlands, floodway, and floodplains, hillsides, and adjacent properties in previous operations; as well as any measures taken by the Operator to alleviate any such problems.

11.14.9 Whether the proposed Oil or Gas Facility will have an adverse effect or impact on any fiscal, economic· or environmental factors, including County services including budgets, housing, water supplies, transportation systems, utilities, health care, law enforcement and fire protection, emergency response, and whether the proposed facility will be detrimental to the public health, and safety.

**11.15** CDRC Development Order

The CDRC shall render a decision on the SUDP Application within 90 days of the Administrator's certification that the Application is complete. The CDRC may approve, conditionally approve, or deny the SUDP Application and shall issue a written development order with findings of fact and conclusions of law.

**11.16** Additional Permits

11.16.1 Once an SUDP has been issued for an Oil or Gas Facility or Facilities, the Applicant shall apply for all required grading and building permits and obtain a Certificate of Completion before any drilling, operation, production, workover, maintenance, repair and testing and all other usual and customary activities associated with the exploration for, and the development, operation and production of oil and/or gas shall commence within the scope of the terms of the SUDP development order.

11.16.2 If construction has not commenced on any Oil or Gas Facility or Facilities authorized by the terms of the SUDP within 18 months of its issuance, the SUDP shall expire and the Applicant shall be required to file a new Application for an SUDP before taking steps leading to the construction of an Oil or Gas Facility or Facilities.

**11.17** Bonds and Insurance

11.17.1 Financial Assurance

11.17.1.1 An Applicant seeking an SUDP for an Oil or Gas Facility shall furnish financial assurances acceptable to the County.

11.17.1.2 Acceptable financial assurances may include: a. A bond in the principal sum of such amount as may be determined by the Board, but not less than Fifty Thousand Dollars ($50,000), in an amount representing the actual cost to remediate the site of the Oil or Gas Facility after abandonment less the amount of any agreement entered into by and between the Operator and a surface owner pursuant to the Surface Owners' Protection Act. A bond shall be executed by a reliable insurance company authorized to do business in the State of New Mexico, as surety, and the Applicant as principal, running to the County for the benefit of the County and all persons concerned, under the condition that the Operator shall comply with the terms and conditions of this Section 9 in the drilling and operation of the well; b. An irrevocable letter of credit issued by a federally-insured financial institution located within the State of New Mexico, backed by cash on deposit at the institution representing the full value of the amount of the letter of credit. The amount shall be set as may be determined by the Board, but in no event shall be for a sum less than Fifty Thousand Dollars ($50,000). A letter of credit shall be for a term of not less than five (5) years, and shall be automatically renewed on like terms unless the issuer notifies the County in writing of non-renewal at least thirty (30) days prior to the end of the five (5) year period.

11.17.1.3 All financial assurances pursuant to this Section shall become effective on or before the date that documentation of such financial assurance is filed with the County.

11.17.1.4 The County shall release the financial assurance deposited pursuant to this Section upon written request of the Operator if the well has been plugged and abandoned and the location restored and/or remediated pursuant to this Ordinance, if the relevant Oil or Gas Facility has ceased operation and has been similarly restored and/or remediated pursuant to this Ordinance, or if a Change of Operator has been approved pursuant to this Article and anew SUDP development order has been granted.

11.17.2 Comprehensive General Liability Insurance

In addition to the required financial assurance, the Operator shall submit with the Application a policy or policies of commercial general liability insurance, including contractual liability, covering bodily injuries and property damage that names the Operator as the insured and the County as an additional insured, issued by an insurance company licensed to do business in the State of New Mexico. The insurance policy must be in a form acceptable to the County and shall further provide a limit of liability of not less than Ten Million Dollars ($ 10,000,000) per occurrence. Said policy or policies shall provide that they may not be cancelled without written notice to the County of at least thirty (30) days prior to the effective date of such cancellation.

11.17.3 Pollution Liability Insurance

The Operator shall submit with the Application a pollution insurance policy or policies that provide standard pollution liability insurance with a coverage of not less than $ 10,000,000 per occurrence, issued by an insurance company authorized to do business in the State, and that names the Operator as insured. Such insurance policy shall be maintained in full force and effect from the date an Application is submitted and continuing in force until the well is plugged and abandoned in accordance with the applicable State statutes, OCD regulations and this Ordinance. A separate policy is not required if pollution coverage is included as a part of the comprehensive general liability insurance policy required by Section 11.17.2. The insurance policy or policies shall provide that they may not be cancelled without written notice to the County at least thirty (30) days prior to the effective date of such cancellation.

11.17.4 Self Insurance

An Operator offering a plan of self- insurance may provide a certificate of insurance as required by this section issued pursuant to such plan provided that such plan has been approved by the Public Regulation Commission of the State of New Mexico and the County's Risk Manager.

**11.18** Standards For Oil and Gas Facilities

11.18.1 *General.* All drilling and other operations conducted at an Oil or Gas Facility or construction of buildings or other structures shall strictly follow the requirements of this Ordinance and the Code and shall be conducted at all times in accordance with the practices of a Reasonable and Prudent Operator.

11.18.2 Emergency Preparedness Plan

11.18.2.1 Each operator of an Oil or Gas Facility is required to provide an updated Emergency Response and Preparedness Plan complying with the Application for the SUDP with the conditions and terms of the development order and development agreement granting approval of the Application for the Oil and Gas Overlay Zoning District Classification. The plan shall be filed with the Fire Chief and the Administrator and shall be updated annually or more frequently if conditions change.

11.18.2.2 The updated Emergency Response and Preparedness Plan shall consist of the following, at a minimum:

(a) Name, address and phone number, including a 24-hour emergency number of at least two persons responsible for emergency field operations;

(b) A facilities map showing the name, location and description of all Oil or Gas Facilities, including the size and type of all pipelines. Once as built drawings are available, they shall be provided if they deviate from the plans previously submitted. "The map shall be prepared either manually on U.S.G.8. 7.5 Minute Series maps (one inch = 2,000 feet), or digitally on the county geographic information system parcel maps. The as-built facilities map shall be held confidentially by the County's Fire Chief, and shall only be disclosed in the event of an emergency;

(c) Copies of the Material Safety Data Sheet (MSDS) for each chemical or substance present at the Oil and Gas Facility;

(d) A written response plan for the potential emergencies that may be associated with the operation of the facilities. This may include any or all of the following: explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills; and

(e) Project specific emergency preparedness plans are required for any project that involves drilling or penetrating through known zones of hydrogen sulfite gas; as determined by the County. This plan shall be coordinated with and approved by the County prior to beginning field operations.

11.18.3 Fire Prevention

11.18.3.1 Each Oil or Gas Facility shall comply with all fire prevention requirements set forth in the Code and all other applicable County ordinances relating to fire prevention, including the County Fire Code and the Urban-Wildland Interface Code. Firefighting apparatus and supplies, as approved by the Fire Chief, and required by any applicable federal, state, or County law shall be provided by the Operator at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and production operations which shall be in addition to all fire facilities operated by full time professional fire fighters as required in the Adequate Public Facilities and Services Assessment. The Operator shall be responsible for the maintenance of such equipment. The Operator shall place a sign in a conspicuous site at each well location or site to identify the Well with its name or number and the telephone numbers of the persons named in the Emergency Response and Preparedness Plan as being responsible for the site.

11.18.3.2 Required Fire Prevention Equipment

11.18.3.2.1. In addition to the requirements related to Adequate Fire Protection Facilities and Services, each Oil or Gas Facility shall maintain adequate fire fighting apparatus, equipment and supplies at the site of the facility at all times during drilling and production operations, including, but not limited to, all of the following:

(a) During drilling operations, a minimum of four portable fire extinguishers, the size, rating, distribution and maintenance of which shall be in accordance with National Fire Protection Association (NFPA) Standard No. 10 ("Portable Fire Extinguishers) and NFPA Standard No. 30 ("Flammable Liquids Code");

(b) Where flammable vapors may be present, precautions shall be taken to prevent ignition by eliminating or controlling sources of ignition. Sources of ignition may include open flames, lightning, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical and mechanical), spontaneous ignition, chemical and physical-chemical reactions and radiant heat. NFPA Standard No. 77 ("Recommended Practice on Static Electricity") and NFPA No. 78 ("Lightning Protection Code") shall be adhered to;

11.18.3.2.2 All hazardous materials and/or special hazards at the facility shall be protected as set forth in applicable NFPA standards;

11.18.3 .2.3 Lightning protection equipment shall be provided at each facility containing crude or water storage tanks. The lightning protection equipment shall be in accordance with recommendations of the NFPA;

11.18.3.2.4 Crude oil and water tanks shall be installed with a vent system approved by the OCD and the Oil and Gas Inspector. A flame arrestor approved by the Oil and Gas Inspector shall be installed on the vent line;

11.18.3.2.5 Copies of the Material Safety Data Sheet (MSDS) for each chemical or substance present at the Oil or Gas Facility shall be posted in a conspicuous place at the Facility.

11.18.4 Hazard Identification and Label Protection:

11.18.4.1 Safety paint shall be used to highlight and mitigate potential hazards of the Oil and Gas Facility such as tripping hazards or protruding mechanical edges that could harm an employee or the public.

11.18.4.2 Hazard labels shall be protected from weathering and maintained in a manner so that they will at all times be legible and eye-catching to employees and the public.

11.18.5 On-site security:

11.18.5.1 When traffic or safety is a concern, on-site security must be provided during active drilling phases.

**11.19** Appearance and Maintenance of the Site

11.19.1 The premises upon which an Oil or Gas Facility is located shall be kept in a clean and orderly condition at all times.

11.19.2 After a well has been completed or plugged and abandoned, the Operator shall clean the premises, complete restoration activities, remove equipment no longer being used and repair all damages to the premises:

11.19.3 No mud, wastewater, oil, slush or other waste shall be permitted to flow off of the drill site.

11.19.4 Suitable and adequate toilet facilities shall be made available and kept in a clean and sanitary condition during drilling operations.

11.19.5 The premises on which the drill site is located shall at all times be kept free of debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other waste material.

11.19.6 An Oil or Gas Facility shall not be used for the storage of pipe or other equipment or materials except during the drilling or servicing of wells.

11.19.7 All above-ground production equipment shall be painted a uniform flat tan color.

11.19.8 All topsoil removed from the surface and retained on the site shall be carefully removed and stockpiled in a manner to prevent erosion and to facilitate its re-application to the disturbed areas during site reclamation.

11.19.9 An Oil or Gas Facility shall not cause significant erosion or sedimentation. When possible, vegetative buffers, swales, berms or waterbars should be used to divert stormwater away from the drill site. Sediment fences or temporary retention ponds shall also be used when possible to trap drill site runoff and sediments.

**11.20** Storage Tanks

Except as otherwise mandated by the OCD, tanks used for the storage of condensate, crude oil, or other liquid hydrocarbons produced by and/or used in conjunction with any Oil or Gas Facility shall conform to the American Petroleum Institute (A.P.I.) standards for such tanks. All storage tanks shall be equipped with a secondary containment system including lining with an impervious material in order to protect against leaks and spills. Each storage tank shall be equipped with a level-control device that will automatically activate a valve to close the well in the event of excess liquid accumulation in the tank.

**11.21** Closed Loop Systems

As defined in Section 7, each site where there is a producing oil or gas well shall have a fluid-containment system using a series of enclosed above ground tanks. Only Closed Loop Systems that meet or exceed the requirements of NMAC 15.1.21, shall be used during the drilling or Completion of any Well. Open pits and reserve pits are prohibited under all circumstances.

**11.22** Water Quality Protection Program

11.22.1 The Operator shall complete a baseline water quality testing program prior to constructing and Oil or Gas Facility. At least three monitoring wells shall be constructed according to guidelines prepared by the County Hydrologist. The location of the monitoring wells shall be specified by the County Hydrologist. However, at least one of the wells shall be at the Oil or Gas Facility or, if directional drilling or horizontal drilling is utilized, at least one

monitoring well shall be located at the surface location corresponding to the bottomhole location. A down gradient well or wells shall be provided. If permission to utilize property for purposes of locating a monitoring well is not provided, the Operator may use County rights-of-way or property as sites for monitoring wells. Water samples from all water wells and surface water sources within a three mile radius of the proposed Well site shall be taken and the parameters tested to establish the baseline water quality in the area. All samples shall be split with the County to enable the County to conduct independent testing. The parameters to be tested shall be specified by the Administrator and the County Hydrologist.

11.22.2 In the event a property owner refuses access to a well for purposes of locating a monitoring well, an affidavit from the Operator shall be provided that summarizes efforts to obtain water samples from the location and the obstacles encountered. If possible, the Operator shall secure the signature of the property owner confirming that property owner's decision. If access is refused as described, the Operator shall be required to drill monitoring wells in alternative locations to provide the baseline data and monitoring required by this Ordinance.

11.22.3 At least annually thereafter, the Operator shall repeat its testing of surface and subsurface water resources to determine whether fresh waters have been degraded or polluted as a result of the operation of the Oil or Gas Facility, as compared to the baseline established during initial testing. Such results shall be provided to the Administrator.

11.22.4 The Administrator shall have the authority to require the construction of supplemental monitoring water wells in the event degradation or pollution is suspected to physically document any degradation or pollution of an aquifer or any other fresh water bearing formation. Such construction and monitoring shall be at the expense of the Operator.

11.22.5 In the event degradation or Pollution of surface or subsurface waters, the Operator shall immediately abate the degradation or Pollution, at its own expense, and cooperate and follow the directives of County, State and federal officials having jurisdiction over the incident.

**11.23** Noise

11.23.1 All construction, maintenance and operations of any Oil or Gas Facility shall be conducted in a manner to minimize the noise created to the greatest extent possible.

11.23.2 The exhaust from all engines, motors, coolers and other mechanized equipment, including compressor station fans, shall be vented in a direction away from the closest existing building units or platted subdivision lots.

11.23.3 Production equipment shall be powered by electric motors if located within 1,320 feet of distribution voltage capable of powering production equipment. Production equipment may be powered by engines prior to the time that the Facility has access to electric power but subject to the restrictions contained in this Subsection.

11.23.4 Drilling and production operations shall not create a sound level greater than 75 dB(a) when measured at a distance of three hundred (300) feet from the source of the sound.

When an inhabited building is within 500 feet of the Facility, drilling and production operations shall not create a sound level greater than 70 dB(a) when measured at a distance of three hundred (300) feet from the source of the sound. A lower sound level shall be required where the Environmental Impact Report determines that the sound levels for a specific site requires further mitigation.

**11.24** Light

11.24.1 All Oil or Gas Facilities shall comply with the Code and the Night Sky Protection Act, NMSA 1978, Sections 74-12-1 et seq. (1999)(as amended) at all times, except as provided for in this Section. All lighting shall be limited to the minimum required to meet security and safety standards consistent with the practices of a reasonable and prudent operator.

11.24.2 The Operator shall log all lighting levels and shall provide night ambient light levels prior to commencing work on the Oil or Gas Facility. Levels shall be provided during the development and operation of the Oil or Gas Facility on a daily basis.

11.24.3 Lights shall be shut off on a drilling rig when not drilling or performing other operational, maintenance or repair functions related to the drilling rig. Lights required by the Federal Aviation Administration that are needed to alert aircraft of the rig shall not be subject to this requirement.

11.24.4 Lighting that does not comply with the Code shall not be permitted.

**11.25** Fracturing and Acidizing

11.25.1 Fracturing and acidizing of any well shall be performed in strict compliance with applicable OCD rules and the practices of a reasonable and prudent operator. Fracturing pressures shall be controlled to limit the extent to which fractures escape the zone being fractured. Fracturing operations may be monitored by the Oil and Gas Inspector to ensure compliance with these standards.

11.25.2 All oil or gas operations, including fracturing and drilling for exploratory wells, shall be conducted only during the hours of 8:00AM to 5:00PM. Upon an Applicant's request, fracturing and exploratory well drilling may be permitted outside these hours if approved by the CDRC on a case-by-case basis. The CDRC shall take into account whether the specific land use or environmental conditions warrant such an allowance. An extended hour application shall not be granted if there are residences within ½ mile of the drill site. If approved for extended exploratory drilling or fracturing hours, Applicants shall at all times abide by all performance standards established in this Ordinance.

11.25.3 Fracturing operations shall not create a sound level of greater than 80 dB(a) when measured at a distance of three hundred (300) feet from the source of the sound.

11.25.4 Fracturing operations shall only use fresh water as the fluid component of the fracturing material. Water and sand used in fracturing operations shall not contain dissolved hydrocarbons or other toxic contaminants. The use of synthetic fracturing fluids is prohibited. Fracturing with brine is prohibited. Fresh water that meets or exceeds drinking water standards

shall be used and such water shall be obtained from the County or a municipal system that supplies drinking water, or a private source, and shall comply with the Water Availability Assessment. If the County Petroleum Engineer agrees, subject to clear and convincing evidence, that use of fresh water during fracturing operations would damage the rock formation so that the oil and gas cannot be recovered, use of other fluids may be authorized so long as the exact constituents of the fluids are on the prescribed list of chemicals, minerals, or materials and approved by the Board, a ground water monitoring program is established, and the need for the use of the specific constituents are verified by the County Petroleum Engineer and approved by a medical professional, both to be selected by the County. Fracturing pressures shall be strictly controlled as provided in the previous paragraph to the satisfaction of the County Petroleum Engineer and oil and gas inspector.

11.25.5 After fracturing operations are completed, all fluids used in the operations shall, to the extent technologically possible, be removed from the well.

11.25.6 Pollution of the surface or any surface or subsurface fresh waters before, during and after the fracing process is prohibited.

**11.26** Setbacks

11.26 .1 No Oil or Gas Facility shall be located closer than the setbacks permitted in the Board's development order approving the Overlay Zoning or the following distances to the following types of land uses; whichever is greater.

(a) Inhabited Dwelling - 750 feet

(b) Building Used as a Place of Assembly, School or Institution - 750 feet

(c) Non-residential Use or Building - 400 feet

(d) Public Road or Highway - 200 feet

(e) Lot Line for a Lot Designated for Residential Use on Approved Plat - 600 feet

(f) Groundwater Re-charge Area, Alluvial Aquifer, Acequia, Perennial, Seasonal or Ephemeral Water Course, Creek, Arroyo, Playa Lake or Wetland as Defined by the United States Corps of Engineers- 1000 feet

(g) 100 Year Floodplain Line as Designated by the Federal Emergency Management Agency - 500 feet

(h) Existing Water Well Permitted by the State Engineer -750 feet

(i) Cultural, Historic or Archeological Resource -750 feet

(j) County Trail or Designated Open Space - 200 feet

(k) Parks, trails, and recreation areas - 250 feet

11.26.1.1 The setbacks listed above are intended to be "minimum" protections for the listed structures and resources. Individual circumstances will be taken into account throughout the Overlay Zoning and SUDP application processes. The Board of County Commissioners is ultimately responsible for deciding where drill sites may be located on an individual property. At the Board's discretion, these setbacks may be increased on a site by site basis. The Board should also pay particular attention to protecting sensitive neighboring uses such as residences when locating drill sites.

11.26.2 Setback Exceptions

When an Applicant cannot locate an Oil or Gas Facility anywhere on the surface because doing so would violate the setback requirements, the Application for the SUDP shall be denied and an Application for a Beneficial Use and Value Determination shall be required in accordance with Section 12.

**11.27** Hours of Operation

Except as provided for in Section 11.25.2, all oil or gas development or operations shall be conducted only between 8:00 AM and 5:00 PM. Upon Applicant's request, drilling (but no other activity) may be permitted up to twenty four (24) hours per day if approved by the CDRC on a case-by-case basis. The CDRC shall take into account whether the specific land use or environmental conditions warrant such an allowance. An extended hour application shall not be granted if there are residences within ½ mile of the drill site. If approved for extended exploratory drilling or fracturing hours, Applicants shall at all times abide by all performance standards established in this Ordinance. Truck deliveries of equipment and materials associated with drilling and/or production, well servicing, site preparation, and other related work conducted on the oil or gas facility shall be limited to between the hours of 8:00 AM and 5:00 PM except in cases of fires, blowouts, explosions and any other emergency or where the delivery of equipment is necessary to prevent the cessation of drilling or production.

**11.28** Visual Impacts

The Oil or Gas Facility or Facilities shall use structures and equipment of the minimum size necessary to satisfy the functional requirement of the Facility. The Operator shall use low profile pumps and equipment to mitigate the adverse visual impacts caused by the Facility or Facilities.

**11.29** Drill Sites

Drill site dimensions for an Oil or Gas Facility or Facilities shall be the minimum size necessary to provide a safe work area and minimize surface disturbance. The site should be oriented in a manner to reduce adverse visual impact on view corridors.

**11.30** Flaring of Gas

Gas shall not be flared except as necessary during drilling and workover operations, and then only as permitted by OCD regulations.

**11.31** Landscaping and Screening

An Oil or Gas Facility or Facilities shall be sited in areas that maximize the amount of natural screening available for the Facility or Facilities. Natural screening includes, but is not limited to, the use of existing vegetation as a background, the construction of the facility or facilities near mature stands of vegetation or behind ridges or natural rock formations. Where natural screening is inadequate, as determined by the CDRC, other screening or fencing, including but not limited to trees, shrubs, grass, ground cover or flowers, bricks, rocks, walls or stones may be required. In exercising this power the CDRC shall consider the existence of any surface use agreement between the surface owner and the mineral owner, and shall comply with the landscaping requirements approved by the Board in the Overlay Zone development order.

**11.32** Fencing

Security fencing and a locked gate for an Oil or Natural Gas Facility or Facilities shall be required where:

(1) There are four (4) or more existing residences within 2500 feet of the facility or facilities;

(2) There is a public or private school within 1000 feet of the facility or facilities;

(3) There is an existing structure used for commercial purposes within 600 feet of the Facility or Facilities;

(4) There is an existing recreational facility located within 1000 feet of the Facility or Facilities;

(5) There is a determination by the CDRC that public safety so requires.

**11.33** Water Quality

(1) The Oil or Gas Facility or Facilities shall not cause significant degradation in the quality and quantity of surface waters from the addition of non-point source pollution; as determined by the Board in the development order for the Overlay Zone.

(2) The Oil or Gas Facility or Facilities shall not cause degradation in the water quality of any public or private well so that any regulated groundwater standard is exceeded or cause a reduction in water pressure of any public or private water wells.

(3) The Oil or Gas Facility or Facilities shall not pose any significant risk, nor cause any significant degradation to subsurface water resources.

(4) The Operator shall maintain all safety and pollution monitoring equipment deemed necessary by the CDRC and shall inspect the equipment quarterly. The results of the monitoring and inspections shall be submitted to the' Administrator.

**11.34** Disposal of Salt Water or Other Deleterious Substances

11.34.1 There shall be no disposal of saltwater, produced water or water containing salts or other minerals in quantities that exceed applicable ground water standards established by the Water Quality Control Commission, at the site of the Oil or Gas Facility.

11.34.2 Drilling mud shall be disposed of by transporting the mud to an OCD-licensed disposal site. The mud may not be buried in an earthen pit on site, pumped down the well bore or down the annulus of a well, or spread on the surface of the ground at the site.

11.34.3 Each Operator shall make sufficient provisions for the safe disposal of water containing salts or other minerals in quantities that exceed applicable ground water standards established by the Water Quality Control Commission, hydrocarbons, or other deleterious substances which may be brought to the surface. Any such disposal shall be at an OCD-approved disposal well or site. No disposal of such substances shall be permitted at the site of the Oil or Gas Facility. When a disposal well is to be used for disposal of such substances, the location of the proposed well shall be identified, the Operator shall identify the disposal well by operator, lease, well name and number, and location.

11.34.4 In the event of any spill or leak of produced water or any deleterious substance, whatever the cause thereof, the Operator shall immediately notify the Oil and Gas Inspector. If, in the judgment of the Inspector, such leak or spill represents a potential hazard to surface or ground water resources or the environment, the Inspector shall immediately notify OCD. The Inspector may require that the Operator strictly follow all orders issued by OCD with respect to the spill or leak, and may additionally require that the Operator conduct testing of the surface and subsurface for pollutant incursion and conduct remediation of the spill or leak as directed by OCD, the cost of which is to be paid by the Operator.

11.34.5 All other waste shall be treated, stored and disposed of in accordance with all local, state and federal requirements.

11.34.6 Surface disposal of wastes of any kind is prohibited at a Oil or Gas Facility.

11.34.7 No person shall deposit, drain or divert into or upon any public highway, street, alley, drainage ditch, arroyo, storm drain, sewer, gutter, creek, stream, river, lake or lagoon, any oil or liquid containing any hydrocarbons, or any drilling mud, sand, water or saltwater, or in any manner permit, by any means, any of such substances to escape from any property owned, leased or controlled by such person. All such material shall be properly disposed of at an OCD-approved facility.

**11.35** Abandonment, Plugging and Site Remediation

11.35.1 Upon the abandonment of a well or Oil or Gas Facility or Facilities, the Operator shall comply with OCD regulations, Water Quality Control Commission regulations, or relevant federal agency regulations, in connection with the abandonment, plugging and remediation.

11.35.2 A copy of the OCD plugging and abandonment forms shall be furnished to the County within ten (10) days of the date of submission to the OCD.

11.35.3 No building shall subsequently be erected on or over, or restricting access to any abandoned well.

11.35.4 Within four months following abandonment, the area formerly occupied by the well or Oil or Gas Facility shall be fully restored to a safe and clean condition. Compliance with the reclamation plan submitted by the Applicant shall be required.

**11.36** Violations, Enforcement, Penalties

**11.36.1** Construction, Installation or Operation of Unapproved Oil or Gas Facilities

11.36.1.1 It shall be unlawful to construct, install, or cause to be constructed or installed, any Oil or Gas Facility or Facilities without the issuance of development orders approving applications for both an Oil and Gas Overlay Zoning District Application, an SUDP and requisite Grading and Building Permits and a Certificate of Completion.

11.36.1.2 It shall be a violation of the Code to construct, install or cause to be constructed or installed, any Oil or Gas Facility in violation of the Code, or contrary to the conditions established by the development orders for the Overlay Zone or SUDP.

**11.36.2** Penalties; Permit Revocation

11.36.2.1 Any Operator, person, firm, corporation or legal entity that violates any provision of Section 11, any provision of the development orders approving an Oil and Gas Overlay Zoning District Classification a SUDP or a valid directive or order of the Administrator, shall be subject to the penalties set forth in NMSA 1978, § 4-37-3 (1993)(as amended).

11.36.2.2 The violation of each separate provision in this Section shall be considered a separate offense, and each day the violation is allowed to continue shall be considered a separate offense.

11.36.2.3 Notwithstanding any other penalty or remedy provided for in this Section, the County may, on finding a violation of provisions of this Section, revoke or suspend any Oil and Gas Overlay Zoning District Classification or SUDP governing the Oil or Natural Gas Facility or Facilities that the County finds to be violating the provisions of this Section upon the same notice and public hearing requirements applicable to the application for the Overlay Zone. The County may also revoke any development order if it is determined that the Operator provided false, misleading; deceptive or inaccurate information and/or documentation to secure issuance of the Oil and Gas Overlay Zoning Classification or Special Use and Development Permit.

11.36.2.4 An Applicant's default also constitutes a default on any existing development agreement held by the Applicant for that Oil or Gas Facility. In such event, remedies are available both under this Ordinance and under the development agreement.

**11.36.3** Authority of the Administrator

11.36.3.1 The Administrator shall have authority to issue any orders or directives required to carry out the intent and purpose of this Section. Any person's failure to comply with such an order or directive shall constitute a violation of this Ordinance.

11.36.3.2 The Administrator shall have the authority to enter and inspect any Oil or Gas Facility or Facilities governed by Section 11 to determine its compliance with the provisions of this Section. If an Operator denies the Administrator entry, the County shall have the right to obtain an order from a court of competent jurisdiction to obtain entry, or may institute proceedings to revoke the Board and CDRC development orders pursuant to a duly noticed public hearing before the Board or CDRC respectively.

11.36.3.3 The Administrator shall have the authority to request and receive any records, logs, reports, studies or other documents relating to the status or condition of an Oil or Gas Facility. Items that are marked "confidential" or "proprietary" shall be kept confidential to the extent permissible as provided in the New Mexico Inspection of Public Records Act, NMSA 1978, Section 14-2-1 *et seq*. Any person's failure to timely provide any such requested materials shall constitute a violation covered by Section 11.6(b).

11.36.3.4 The Administrator shall have the authority to order immediate remedial action of he or she finds that the Operator or any. person for whom the Operator is legally responsible has not complied with the requirements of this Section, if the Administrator also finds that such noncompliance constitutes a hazard to the public health, safety or general welfare. If the persons responsible for noncompliance fail to take immediate steps to eliminate the hazard, or if the situation is so perilous as to constitute an imminent threat to the public health, safety or general welfare, the Administrator may order the prompt cessation of all activity at the Well site or in the entire Oil or Gas Facility, including evacuation of the premises and/or the temporary suspension of the SUDP applicable to the Facility, subject to a public hearing to be held by the CDRC within twenty (20) days after the Administrator's Order.

11.36.3.5 In case any building, structure or other oil and gas related project is or is proposed to be erected, constructed, reconstructed, altered or used, or any land is or is proposed to be used, in violation of any provision of this Ordinance, the County, in addition to the other remedies provided by law, ordinance or resolution, may seek an injunction, mandamus, or abatement of activity or pursue other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration or use.

11.36.3.6 Any person or organization, affected by any violation of this Ordinance, may sue to enjoin violations of, or compel compliance with, any provision of this Ordinance.

11.36.3.7 The Administrator is hereby authorized to prepare and promulgate staff instructions for the implementation of this Ordinance and administrative rules and regulations

which shall be approved by the CDRC and the Board respectively. The Administrator shall assign one staff member of the Santa Fe County Growth Management Land Use Department to supervise and manage each application for an Oil and Gas Overlay Zoning District Classification and subsequent SUDP. The assigned staff member shall be the contact point for all relevant owners, lessees and interested persons regarding the status of the application throughout the administrative process.

**SECTION 12. BENEFICIAL USE AND VALUE DETERMINATION.**

**SECTION 12.1. PURPOSE AND INTENT.**

**12.1.1.** The purpose of these provisions is to ensure that a denial of an Oil and Gas Overlay Zoning District Classification application or of a subsequent Special Use and Development Permit application does not result in an unconstitutional deprivation of private property.

**12.1.2.** The intent of the Board is to provide through this Section an administrative variance process to resolve any claims that the application of this Ordinance has had an unconstitutional effect on property. This Section is not intended to provide relief related to regulations or actions promulgated or undertaken by agencies other than the County. The provisions of this Section are not intended to, nor do they, create a judicial cause of action.

**SECTION 12.2. APPLICATION; EXHAUSTION; SUFFICIENCY; AND CONTENTS OF APPLICATION.**

**12.2.1.** Generally. An application for a beneficial use and or value determination shall be made to the County by filing an application and paying an application fee as established by the Board within one year subsequent to the Board's final development order with respect to denying or modifying an application for development approval of an Oil and Gas Overlay Zoning District Classification, or within one year from the denial or modification of an application for Special Use and Development Permit, if an Oil and Gas Overlay Zoning District Classification has previously be approved.

**12.2.2.** Contents of application. The application shall be submitted in a form established by the Administrator and shall include the following:

**12.2.2.1.** Contact information. The name, address, and telephone number of the applicant; the name, address and telephone number of the owner of the subsurface mineral estate and/or the oil and gas lessee, if applicable.

**12.2.2.2.** Legal description. A legal description and the real estate or parcel number for the subsurface and surface property in the same ownership.

**12.2.2.3.** Letter of agency. If a person other than the applicant is requesting relief pursuant to this division, a notarized letter of agency from the owner of the subsurface mineral estate and/or oil and gas lessee ("Owner") authorizing the person to represent them with respect to the

application. Except as specifically provided herein, the owner or lessee will be bound by the representations, obligations, and agreements made by the owner's or lessee's agent in the course of the beneficial use and value determination process. The term "applicant" as used in this division refers to the owner or lessee, or the owner's and lessee's agent, as applicable.

**12.2.2.4.** Date of acquisition, offers to purchase, and attempts to sell. Documentation of the date of acquisition of all land acquired in the same ownership, the price incurred to acquire the property, the date and amount of any offers by any person, corporation, governmental entity, or association to acquire the property, and any attempts by the owner or lessee to sell or assign the subsurface mineral estate or oil and gas lease, or to purchase or sell transferable development rights.

**12.2.2.5.** Land development code regulation or General Plan policy. A statement describing the land development code regulation, general or area plan policy, or other final developmental order or action of the County, which the applicant believes necessitates relief under this Section, including the effective date of the land development code regulation or general or area plan policy and/or the date of the final action by the County related to the property. The application shall identify the land development code regulations or general plan or area plan policies of the County by section and number.

**12.2.2.6.** Description of land. A description of the property's physical and environmental features, total acreage, and use presently at the time of acquisition, and upon the effective date of the development order, the applicant asserts requires relief under this section.

**12.2.2.7.** Improvements to land. Evidence of any investments made to improve the property, the date the improvements were made, and the cost of the improvements.

**12.2.2.8.** Description of allowable uses. A description of the type and extent of land uses allowed on the surface and subsurface of property, from the time the applicant acquired the property until the date of application under this section, including allowable density, permitted and special uses, number and location of oil and gas wells, transfer of development rights permitted, opens space ratios, and other factors affecting the property's development potential.

**12.2.2.9.** Requested relief. A statement regarding the form of relief requested by the owner, pursuant to Section 9.6.2.7, Granting of Relief.

**12.2.2.10.** Maps. Maps shall be included in the application, which show the property presently, at the time of acquisition, and upon the effective date of the development order of the County the applicant asserts requires relief under this Section. Maps shall indicate the land use designation, future land use designation, aerial photography, and environmental conditions and habitat, cultural, historical or archaeological artifacts or sites on the property.

**12.2.2.11.** Previous development applications and appeals. A description of all efforts to seek approval to develop the property for oil and gas exploration, including date of application; name of the local, state, or federal agency; nature of approval, denial, or appeal sought; disposition; and the date of disposition.

**12.2.2.12.** Agency approvals. Evidence of whether the applicant has received necessary approvals from governmental agencies other than the County, which are required in order to undertake development of the property for oil and gas exploration and drilling.

**12.2.2.13.** Signature of owner and agent. The signature of landowner(s) and agent(s), attesting to the accuracy of the statements and representations made in the application.

**12.2.2.14.** Additional materials. Appraisals, studies, or evidence supporting the applicant's contention that relief under this division is appropriate, including appraisals related to any alleged diminution of all or substantially all fair market value of the property.

**12.2.2.15.** The Board's development orders and the findings on all of the assessments, plans, reports and studies required for the application for an Oil and Gas Overlay Zoning District Classification, or for the application for the Special Use and Development Permit.

**SECTION 12.3. STANDARDS APPLICABLE TO OWNER AND OWNER'S REPRESENTATIVE.**

**12.3.1.** The owner or lessee and the owner's or lessee's representative shall file a memorandum setting forth the legal basis asserted for relief under this Section.

**12.3.2.** The signature upon the application by the owner or lessee and the owner's or lessee's representative shall constitute a certification that the owner's or lessee's representative have undertaken due diligence in the filing of the application, that to the best of their joint and individual knowledge the application is supported by good grounds under applicable laws, and that the application has been filed in good faith, consistent with the purpose and intent of this Section.

**12.3.3.** The owner or lessee and owner's or lessee's representative shall have a continuing obligation throughout the proceedings to correct any statement or representation found to have been incorrect when made or which becomes incorrect by virtue of changes circumstances.

**12.3.4.** If a claim for relief pursuant to this Section is based upon facts the owner or lessee or the owner's or lessee's representative knew or should have known were not correct or upon assertions of law that were frivolous, the hearing officer shall dismiss the application.

**SECTION 12.4. DETERMINATION AND SUFFICIENCY.**

Within fifteen (15) calendar days of accepting the application, the Administrator shall determine if the application is complete and includes the materials and information listed in subsection (b)(1)-(14) above. The Hearing Officer may require the owner or lessee to provide additional information in order to hold a public hearing under this section and may conduct a public hearing on whether the application should be dismissed for failure to include information necessary to make a recommendation, based on the standards set forth in this division.

**12.4.1.** Determined insufficient. If the Administrator determines the application is not complete, a written notice shall be mailed to the applicant specifying the application's deficiencies. No further action shall be taken on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies within thirty (30) calendar days of a notice of deficiencies, the application shall be considered withdrawn.

**12.4.2.** Determined sufficient. When the application is determined to be complete, the Administrator shall notify the applicant in writing and, within thirty (30) calendar days, forward the application to the Hearing Officer to set a hearing date.

**12.5. ACTION BY THE HEARING OFFICER.**

**12.5.1.** Designation of Hearing Officer. The Board of County Commissioners shall designate a panel of hearing officers. The Board of County Commissioners shall select a Hearing Officer from that panel for the beneficial use or value determination process.

**12.5.2.** Establishment of date for hearing and notice. The Hearing Officer shall schedule and hold a hearing on a beneficial use or value determination application within sixty (60) calendar days of receipt of the complete application from the Administrator.

**12.5.3.** Hearing. At the hearing, the mineral estate owner or oil or gas lessee or owner's or lessee's representative shall present the owner's or lessee's case and the County Attorney or County Attorney's representative shall present the County's case. The Hearing Officer may accept briefs, evidence, reports, or proposed recommendations from the parties. Interested parties other than the owner or lessee shall be permitted to intervene in the proceedings provided: the intervenor shall be an organization or association registered to receive notice under this Ordinance; any public or governmental agency; or any owner of a surface or subsurface estate or lessee of an oil and gas lease within one (1) mile of the site perimeter, or any person aggrieved or with standing to intervene.

**12.5.4.** Findings of the Hearing Officer. Within sixty (60) calendar days of the close of the hearing, the Hearing Officer shall prepare and transmit in writing to the Administrator, County Attorney, owner, lessee, and owner's and lessee's representatives, and all other represented parties, a summary of all the evidence, testimonial or documentary submitted, rulings on objections to evidence, and a written recommendation regarding the relief to be granted based on the evidence submitted and the standards set forth in Section 12.7.

**12.5.4.1.** If the Hearing Officer's recommendation is that relief is not appropriate, the recommendation shall specify the factual and legal basis for the recommendation.

**12.5.4.2.** If the Hearing Officer's recommendation is that some form of relief is appropriate, the recommendation shall:

(a) Recommend a form of relief, pursuant to Section 12.9 ("Granting of Relief").

(b) Indicate the basis for the recommendation, including, as applicable:

(1) identification of the County land development code regulation, general or area plan policy, development order or other action that resulted in the recommendation for relief;

(2) the date the land development code regulation, general or area plan policy, or other final action of the County affected the property so as to necessitate relief; and

(3) determine whether the oil and gas project proposed for the site, taking into account all of the findings and development order of the Board, constitutes an as applied public nuisance or creates adverse public nuisance effects or impacts, for which no relief can be recommended.

**12.6. ACTION BY THE ADMINISTRATOR.**

Based on the recommendations of the Hearing Officer, the Administrator shall prepare the item for consideration by the Board. Within thirty (30) calendar days of receipt of the recommendations of the Hearing Officer, the Administrator shall forward the Hearing Officer's recommendation to the Board to set a public hearing on the matter.

**12.7. ACTION BY THE BOARD OF COUNTY COMMISSIONERS.**

Following receipt of the matter from the Administrator, the Board shall within thirty (30) days set the matter for a public hearing. The County shall provide the same notice as required on the Application for the Oil and Gas Overlay Zoning District Classification and the applicant and any other interested party shall be provided an opportunity to be heard prior to the decision of the Board. The recommendation of the Hearing Officer is not binding on the Board. At the hearing, the Board shall grant a development order by resolution, approving, modifying, reversing, or approving with conditions, the recommendations of the Hearing Officer, based on the standards of this Section. The development order shall:

(a) state a date, if any, upon which a development order granting relief will cease to be in effect;

(b) state that neither the Board's development order nor any process or evidence constitutes an admission of a taking of property, or other unconstitutional deprivation;

(c) direct County staff to undertake any additional steps necessary to implement the development order; and

(d) address other matters necessary to implement the purpose and intent of this section.

## 12.8. BENEFICIAL USE AND VALUE STANDARDS.

**12.8.1.** Standard. In furtherance of the purpose and intent of this section relief under this section may be granted where a court of competent jurisdiction likely would determine that a final action by the County has caused a regulatory taking of property and a judicial finding of liability would not be precluded by a cognizable defense, including public nuisance, lack of distinct reasonable investment-backed expectations, failure to establish all or substantially all loss of economic use and value of the property in the same ownership taking into account the available property interest in transfers of development rights granted by this Ordinance, whether utilized or not, statutes of limitation, laches, or other preclusions to relief. Whether such liability, at the time of application under this section is likely to be established by a court shall be determined based on applicable statutory and case law at the time an application is considered under this Section.

**12.8.2.** Burden. The applicant shall have the burden of showing that relief under this Section is appropriate.

## 12.9. GRANTING RELIEF.

**12.9.1.** General. If the Board determines that relief is appropriate under this division, relief may be granted, as provided in this section and consistent with the general plan, or applicable area plan.

**12.9.2.** Forms of relief. In order to avoid an unconstitutional result and to provide a owner with an economically viable use and value of property pursuant to this section, the Hearing Officer may recommend and the Board may allow for the minimum additional use(s), density, or relief necessary to alleviate any unconstitutional taking or deprivation as set forth in Section 12.7, including:

**12.9.2.1.** Eligibility for real property tax relief, reduction of property assessment or adequate public facility incentives;

**12.9.2.2.** Authorization of additional oil or gas well sites or further collocation of oil and gas drill sites;

**12.9.2.3.** Granting of an Overlay Zoning Oil and Gas District Classification for a future time or phase, especially where adequacy of public facilities and services require are not fully available for the entire project at the time of Overlay Zone approval;

**12.9.2.4.** Transferable development rights (TDRs);

**12.9.2.5.** Eligibility for donation of the property;

**12.9.2.6.** Repeal or amendment of the land development code regulation or general plan or area plan policy or development order applied to the subject property;

**12.9.2.7.** Any other economically beneficial use or value of the property or relief the Board determines appropriate; or

**12.9.2.8.** Any combination of the above.

**12.9.3.** Minimum increase. Relief granted pursuant to this Section shall be the minimum necessary to comply with the law.

**SECTION 13. SEVERABILITY.**

If any provision of this Ordinance shall be held invalid or non-enforceable by any court of competent jurisdiction for any reason, the remainder of this Ordinance shall not be affected and shall be valid and enforceable to the fullest extent of the law.

**SECTION 14. AMENDMENT OF THE SANTA FE COUNTY LAND DEVELOPMENT CODE, ARTICLE III, SECTION 5.2.**

The definition of "Mineral" set forth in Article III, Section 5.2 of the Code, is hereby amended as follows:

> "Mineral – means an inanimate constituent of the earth in solid state which when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form of metal or metallic compound, a non-metal, a non-metallic compound, a raw material for manufacturing, but shall not include surface water, or subsurface water, sand or gravel regulated by Article XI of this Code, or oil and gas. Mineral shall include oil shale or tar sands."

**SECTION 15. EFFECTIVE DATE.**

This ordinance shall become effective thirty (30) days following recordation in the Office of the County Clerk, or February 27, 2009 (the expiration of the Ordinance No. 2008-02, the Interim Emergency Development Ordinance), whichever date occurs last.

SFC CLERK RECORDED 12/10/2008

**PASSED, APPROVED AND ENACTED** this 9th day of December, 2008, by the Board of County Commissioners of Santa Fe County.

**THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY**

By: _____
Paul Campos, Chair

**ATTEST:**

_____
Valerie Espinoza, County Clerk

Approved as to form:

_____
Stephen C. Ross, County Attorney

COUNTY OF SANTA FE )
STATE OF NEW MEXICO ) ss

BCC ORDINANCE
PAGES: 119

I Hereby Certify That This Instrument Was Filed for Record On The 10TH Day Of December, 2008 at 09:45:18 AM And Was Duly Recorded as Instrument # 1546232 Of The Records Of Santa Fe County

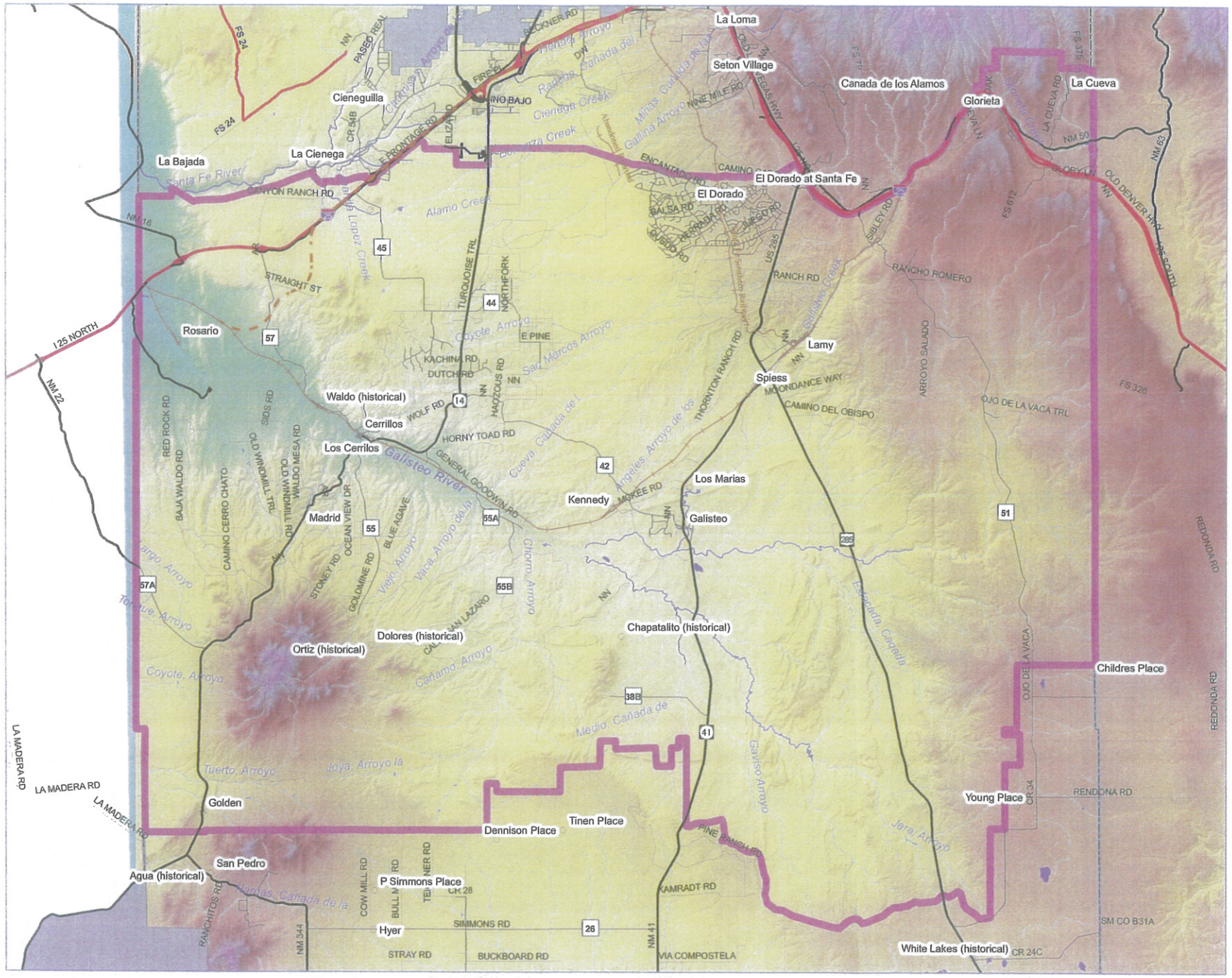
Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy _____ County Clerk, Santa Fe, NM

# EXHIBIT A

SFC CLERK RECORDED 12/10/2008

# Exhibit A – Galisteo Basin Planning Area Map

## Santa Fe County Oil and Gas Ordinance




### Legend

- Railroads
- Railrunner Alignment

**Roads**

- Federal
- State
- County
- Other
- Incorporated
- Galisteo Basin Planning Area Boundary
- Sante Fe County Boundary
- Stream/River: Intermittent / Other
- Stream/River: Perennial
- Water Body

Please use this map as a guide and not as definitive information. The areas depicted by this map are approximate and are provided for illustrative purposes only. While every effort has been made to ensure the accuracy, completeness, correctness, and timeliness of information presented within this map, the burden for determining appropriateness for use rests solely with the user. This map is provided "as is" with no warranties, express or implied.

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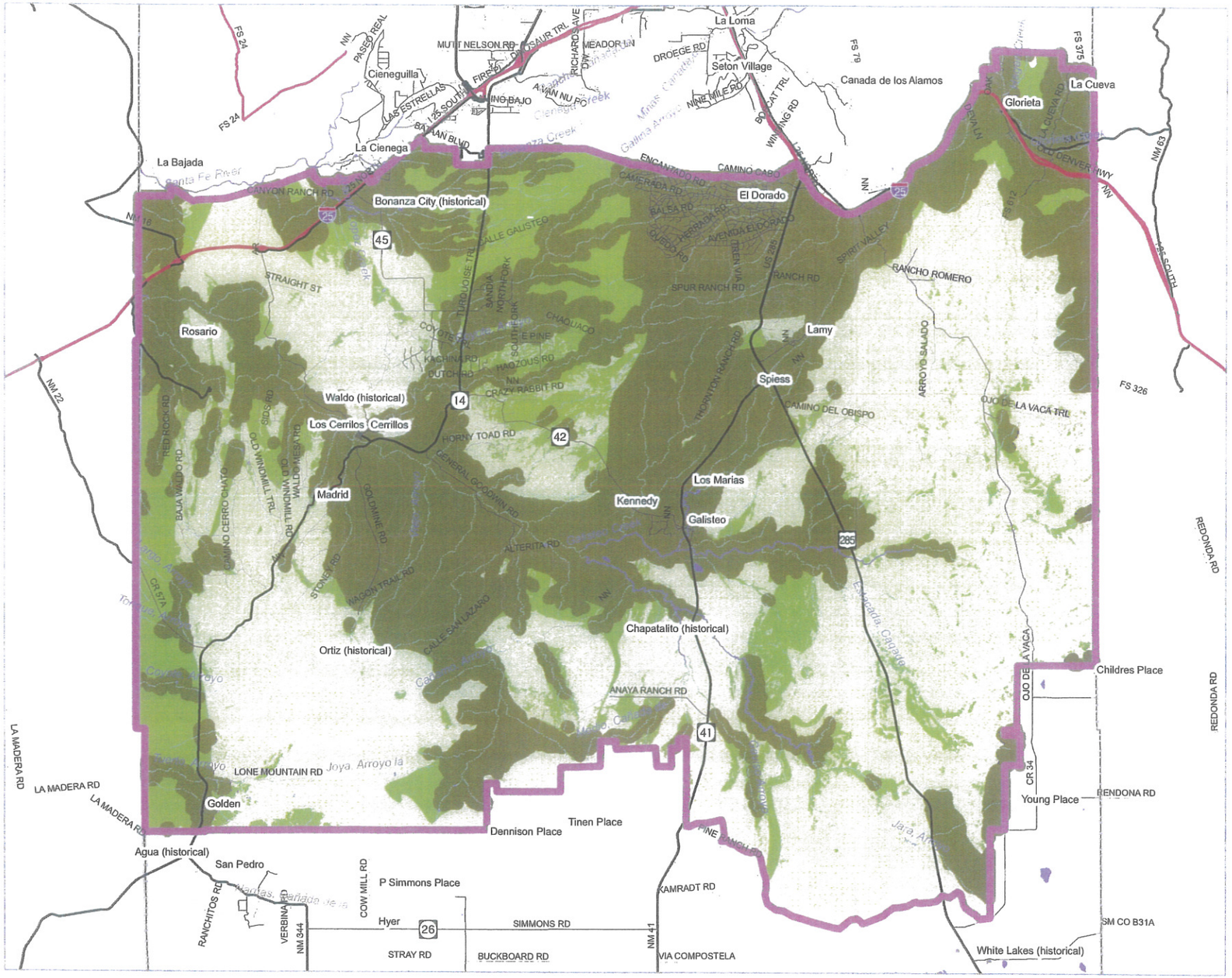
Santa Fe County Planning Dept., Santa Fe County Geographic Information Systems (GIS) Dept., New Mexico Dept. of Tran sta Source: NM DOT).

# EXHIBIT B

SFC CLERK RECORDED 12/10/2008

# Exhibit B - Land and Environmental Suitability Analysis Map

## Santa Fe County
## Oil and Gas Ordinance




Please use this map as a guide and not as definitive information. The areas depicted by this map are approximate and are provided for illustrative purposes only. While every effort has been made to ensure the accuracy, completeness, correctness, and timeliness of information presented within this map, the burden for determining appropriateness for use rests solely with the user. This map is provided "as is" with no warranties, express or implied.

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SFC CLERK RECORDED 12/10/2008

## APPENDIX A
## APPLICATION FEES

1. Application for an overlay zoning zone: $5,000

2. Application for a Special Use and Development Permit: $5,000

3. Inspection Fees:

    a. Initial Inspection: $500
    b. Pre-final Inspection: $350
    c. Final Inspection: $500
    d. Courtesy Inspection: $300